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THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

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IN RE: * CHAPTER 11
*
GLOBAL CAPACITY HOLDCO, LLC, et al.1 * CASE NO. 10-12302 (PJW)
* (Jointly Administered)
DEBTORS. *

Hearing Date: 1/26/2011 at 2:30 p.m. E.T.
Objection Deadline: 1/24/2011 at 4:00 p.m. E.T.

NOTICE OF HEARING ON: (1) MOTION TO APPROVE MODIFIED ASSET PURCHASE AGREEMENT OF PIVOTAL GLOBAL CAPACITY LLC FOR THE ACQUISITION OF THE DEBTORS' ASSETS UNDER OR IN CONJUNCTION WITH ITS PLAN OF REORGANIZATION, CONSUMMATION OF THE TRANSACTION WITH PIVOTAL GLOBAL CAPACITY LLC, AND ASSUMPTION AND ASSIGNMENT OF MISSION CRITICAL VENDOR CONTRACTS; (2) MOTION FOR ORDER UNDER 11 U.S.C. §§ 105, 363, 364(c)(1) & (2), AND 364(e), FED. R. BANKR. P. 2002, 4001, AND 9014: AUTHORIZING DEBTORS TO OBTAIN INCREASED POSTPETITION SALE CLOSING FINANCING ON SUPERPRIORITY AND SECURED BASIS, AND AUTHORIZING THE USE OF CASH COLLATERAL; AND (3) PLAN CONFIRMATION

PLEASE TAKE NOTICE that on January 13, 2011 Global Capacity Holdco, LLC, a Delaware corporation and its affiliated debtors (the "Debtors"), by and through their undersigned counsel, filed and served the (1) Motion to Approve Modified Asset Purchase Agreement of Pivotal Global Capacity LLC for the Acquisition of the Debtors' Assets Under or in Conjunction with its Plan of Reorganization, Consummation of a Transaction with

1 The Debtors in these cases, along with their case numbers, addresses, and the last four digits of each Debtor's federal tax identification number, are: Global Capacity Holdco, LLC, 200 S. Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12302) (8858); Global Capacity Group, Inc., 730 North Post Oak Road, Houston, TX 77024 (10-12303) (0073); 20/20 Technologies, Inc., 200 South Wacker, Suite 1650, Chicago, IL 60606 (10-12304) (5612); Centrepath, Inc., 275 Winter Street, Waltham, MA 02451 (10-12305) (9034); Capital Growth Systems, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12306) (3505); Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12307) (1970); FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12308) (7892); Nexvu Technologies, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12309) (4626); Capital Growth Acquisition, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12311) (4116); and 20/20 Technologies I, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12310) (5514).

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M. McKean

Pivotal GC and Assumption and Assignment of Mission Critical Vendor Contract (the “Plan Sale Motion”) [Docket No. 561]; (2) the Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) & (2), and 364(e), Fed. R. Bankr. P. 2002, 4001, AND 9014: Authorizing Debtors to Obtain Increased Postpetition Sale Closing Financing on Superpriority and Secured Basis, and Authorizing the Use of Cash Collateral (the “Sale Financing Motion”) [Docket No. 562]; and (3) Notice of Non-Material Plan Modifications and Modified Pivotal APA, and Classes 1-5 Vote for Plan as Modified (the “Modified Plan”) [Docket No. 560].

PLEASE TAKE FURTHER NOTICE that pursuant to the Court’s direction, responses, if any, to the Plan Sale Motion, the Sale Financing Motion or the Modified Plan, must be filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, on or before **January 24, 2011 at 4:00 p.m. (Eastern)**.

PLEASE TAKE FURTHER NOTICE that at the same time you must also serve a copy of the response upon the following Notice Parties: (a) counsel to the Debtors, Heller, Draper, Hayden, Patrick & Horn, LLC, 650 Poydras Street, Suite 2500, New Orleans, Louisiana 70130-6103, Attn: Douglas S. Draper, Esq., and Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801, Attn: Francis A. Monaco, Jr., Esq.; (b) the Office of the United States Trustee, 844 King Street, J. Caleb Boggs Federal Building, Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Kevin Callahan; (c) counsel for the Official Committee of Unsecured Creditors, Polsinelli Shughart PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801, Attn: Christopher A. Ward, Esq. and Locke Lord Bissell & Liddell, 111 South Wacker Drive, Chicago, IL 60606, Attn: David W. Wirt, Esq; and (d) counsel to Pivotal Global Capacity LLC, Lewis and Roca LLP,

40 N. Central Avenue, Suite 1900, Phoenix, AZ 85004, Attn: Susan M. Freeman, Esq. and
Pachulski Stang Ziehl & Jones, 919 N. Market Street, 17th Floor, Wilmington, DE 19801,
Attn: Laura Davis Jones, Esq.

PURSUANT TO THE COURT'S DIRECTION, A HEARING ON THE
PLAN SALE MOTION, SALE FINANCING MOTION AND THE MODIFIED PLAN
WILL BE HELD ON **JANUARY 26, 2011 AT 2:30 P.M. (EASTERN)**, BEFORE THE
HONORABLE PETER J. WALSH, UNITED STATES BANKRUPTCY JUDGE, IN THE
UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 6TH
FLOOR, 824 MARKET STREET, WILMINGTON, DELAWARE 19801 ONLY IF
OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS
NOTICE.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS
NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE
MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: Wilmington, Delaware
January 13, 2011

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

/s/ Francis A. Monaco, Jr.
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-and-

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Attorneys for the Debtors and Debtors-in-Possession

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	* CHAPTER 11
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GLOBAL CAPACITY HOLDCO, LLC, <u>et al.</u> ¹	* CASE NO. 10-12302 (PJW)
	* (Jointly Administered)
DEBTORS.	*
	* <i>Proposed Hearing Date: 1/26/2011</i>
	* <i>at 2:30 p.m. E.T.</i>
	* <i>Proposed Objection Deadline: 1/24/2011</i>
	* <i>at 4:00 p.m. E.T.</i>

**MOTION TO APPROVE MODIFIED ASSET PURCHASE AGREEMENT OF
PIVOTAL GLOBAL CAPACITY LLC FOR THE ACQUISITION OF THE
DEBTORS' ASSETS UNDER OR IN CONJUNCTION WITH ITS
PLAN OF REORGANIZATION, CONSUMMATION OF THE
TRANSACTION WITH PIVOTAL GLOBAL CAPACITY LLC, AND
ASSUMPTION AND ASSIGNMENT OF MISSION CRITICAL VENDOR
CONTRACTS**

Global Capacity Holdco, LLC, a Delaware corporation and its affiliated debtors (the "Debtors"), by and through their undersigned counsel, hereby file this Motion to Approve Modified Asset Purchase Agreement of Pivotal Global Capacity LLC ("Pivotal GC") for the Acquisition of the Debtors' Assets Under or in Conjunction with its Plan of Reorganization, Consummation of a Transaction with Pivotal GC and Assumption and Assignment of Mission Critical Vendor Contracts ("Motion"). In support of the Motion, Debtors respectfully represent as follows:

¹ The Debtors in these cases, along with their case numbers, addresses, and the last four digits of each Debtor's federal tax identification number, are: Global Capacity Holdco, LLC, 200 S. Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12302) (8858); Global Capacity Group, Inc., 730 North Post Oak Road, Houston, TX 77024 (10-12303) (0073); 20/20 Technologies, Inc., 200 South Wacker, Suite 1650, Chicago, IL 60606 (10-12304) (5612); Centrepath, Inc., 275 Winter Street, Waltham, MA 02451 (10-12305) (9034); Capital Growth Systems, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12306) (3505); Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12307) (1970); FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12308) (7892); Nexvu Technologies, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12309) (4626); Capital Growth Acquisition, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12311) (4116); and 20/20 Technologies I, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12310) (5514).

Background

1. Debtor filed for relief pursuant to Chapter 11 of the United States Bankruptcy Code on the 23rd day of July, 2010.

2. Venue of this Motion is proper.

3. Since that time, the Debtors have served as Debtors-in-Possession with the rights and powers of Debtors-in-Possession.

4. On August 11, 2010, Debtors filed a motion for entry of an order approving bidding procedures in connection with the sale of substantially all of the Debtors' contracts and unexpired leases, approving stalking horse bid protections, approving the form and manner of notice of a sale hearing, and for entry of an order approving and authorizing the sale of substantially all of the Debtors' assets free and clear of liens, claims, interests and encumbrances and authorizing the assumption and assignment of executory contracts and unexpired leases as part of the sale or an alternative transaction [DE 115] (the "Sale Motion").

5. The Sale Motion was filed in conjunction with the Joint Chapter 11 Plan of Reorganization for Debtors dated as of August 11, 2010 [DE 113] (the "Plan"), which provided for Plan funding through the Sale.

6. On August 24, 2010, the Court entered an order approving sale and contract assumption and assignment procedures (as amended thereafter, the "Bidding Procedures"), scheduling an auction (the "Auction") for October 14, 2010 and a sale approval hearing (the "Sale Hearing") for October 19, 2010, and granting related relief (the "Sales Procedures Order") [DE 171].

7. The Sale Motion and Plan were filed in conjunction with a Plan Support

Agreement negotiated between the Debtors and the holders of secured notes issued by the Debtors.

8. The Sale Motion and Plan designated a new entity to be funded by the Tranche B Lenders as the “conditional stalking horse bidder.” The bid by the Tranche B Lenders contained in the Sale Motion and Plan would become the stalking horse bid if the Tranche B Lenders could provide evidence by late September that it possessed sufficient funds or commitments to fund the payments set forth in the Debtors’ Plan.

9. The six week period between the filing of the Motion and the date the Tranche B Lenders needed to provide evidence of funds was designed to provide the Tranche B Lenders with sufficient time to raise the money and reach agreements to fund the Plan costs.

10. The bid procedures approved by the Court required that, in the event the conditional “stalking horse” became the stalking horse, any party wishing to acquire the Debtors’ assets would have to bid in excess of \$30,000,000. If no overbid was received, then no Auction would be held and if the Tranche B Lenders had raised the money to close, GAC would be the purchaser of substantially all of the Debtors’ assets under the Plan. Plan confirmation was set for November 2, 2010.

11. The Tranche B Lenders failed to provide the Debtors with sufficient evidence that they had raised the money to fund Plan costs by the deadline for doing so in the Plan Support Agreement.

12. In order to exit Chapter 11 in the most efficient manner possible (cost and time), the Debtors amended and modified the bid procedures to encourage offers from other bidders.

13. The modified bidding procedures opened up the bidding process and required that bidders provide, among other things: (i) a marked-up asset purchase agreement; and (ii) evidence of financial capability. The modified procedures gave buyers a 48-hour period after being designated as the winning bidder to provide hard evidence of the funding necessary to close the sale.

14. By the deadline for submitting bids in the bidding procedures, (i) GC Newco, initially designated as the stalking horse bidder, was a Qualified Bidder; (ii) Pivotal GC submitted a bid (as amended, the "Pivotal GC Bid") with attached form of Asset Purchase Agreement (as amended, the "Pivotal APA"), evidence of financial ability to close, and all other documents required to be a Qualified Bidder; and (iii) Global Telecom & Technology, Inc. ("GTT") also submitted a bid without a form of Asset Purchase Agreement or schedules and without evidence of financial ability to close. The Debtors notified GC Newco, Pivotal GC, GTT and other required parties on October 20, 2010 that Pivotal GC was determined to be the lead bidder.

15. The Auction was commenced in Chicago, Illinois. The Debtors noted that they had received three non-conforming bids but that they would not disqualify any bidder. The Debtors announced their goal was to obtain the highest bid from each party and then bring those bids back to the Board to make a selection to recommend to the Court.

16. The initial bids from GAC, GTT and Pivotal GC contained elements which would allow the Debtors to accomplish their stated goal of confirming a plan. Each of the bids contained consideration for the administrative priority creditors of the estate.

17. The Chicago Auction adjourned and was scheduled to convene two business days later in New York.

18. On October 25, 2010, the Auction continued. GTT and GC Newco submitted a combined bid. Pivotal GC submitted an amendment to the Pivotal GC Bid. On October 26, 2010, Pivotal GC provided the Debtors with a formal, written amendment to the Pivotal GC Bid. On October 26, 2010, the Debtors considered and evaluated the bids, and determined that Pivotal GC was the Successful Bidder.

19. The Board, at its meeting, passed a resolution to recommend to the Court the revised Pivotal GC bid. The Debtors selected the Pivotal GC as the Successful Bidder based upon criteria that included, without limitation, the following:

- a. The bid was structured in such a fashion that could confirm a plan;
- b. The documentation provided by Pivotal relative to financial ability to close had the least risk of default;
- c. the offer was a highest and best offer for the greatest number of classes of creditors; and
- d. the indication from one of the largest Mission Critical Vendor was that Pivotal was the purchaser of choice.

Notwithstanding the selection of Pivotal GC, the Board directed the Debtors' financial advisors to keep soliciting bids and work with the existing bidders to maximize the value of the estate and to all of its creditors' constituencies.

20. On November 8, 2010, the Debtors filed a Motion to Approve Debtors' Selection of the Bid of Pivotal GC as the Qualifying Bid for the Purchase of Substantially all of the Debtors' Assets Under or in Conjunction with its Plan of Reorganization and

Consummation of the Sale Transaction with Pivotal Global Capacity LLC [DE 392] (the “Pivotal GC Bid Motion”). Objections to the Pivotal GC Bid Motion were filed by Universal Service Administrative Company [DE 414], supplementing prior objections [DE 136, 310] (collectively, “USAC Objection”), by the Prepetition Debenture Holders, Tranche B DIP Lenders and Stalking Horse Bidder [DE 419] (“Debenture Holders Objection”), in which Global Telecom & Technology joined [DE 420] (“GTT Joinder”), and by Capstone Investments [DE 429] (“Capstone Objection”). A hearing was commenced on November 8, 2010, and continued on November 19, 2010. On December 2, 2010, the Debtors filed a Notice of Withdrawal of the Pivotal Bid Motion [DE 479] after the deadline for Court approval of the Pivotal Bid Motion expired.

21. Ultimately, Pivotal GC acquired the claims of the Tranche A and B Lenders and the Pre-petition Debenture Holders. Pivotal GC then provided the Debtors with a modified offer to purchase the Debtors’ Assets (the “Modified APA”).

22. The Modified APA is described in the NOTICE OF NON-MATERIAL PLAN MODIFICATIONS AND MODIFIED PIVOTAL APA, AND CLASSES 1-5 VOTE FOR PLAN AS MODIFIED (the “Modification Notice”), filed with this Motion. A copy is attached as Exhibit A. The form of order Debtors ask the Court to enter is attached as Exhibit B.

23. The Modification Notice also describes modifications to the Plan that are not material except with respect to the Debenture Holders’ claims, which were acquired by Pivotal GC, and which Debtors are seeking to confirm on the same date as the hearing on this Motion and in conjunction with this Motion.

24. In accordance with Local Rule 6004, the Debtors state as follows:

- A. This is not a sale to an Insider.
- B. There are no current agreements with management or existing employees. The Purchaser expects to discuss and enter into such agreements in the future.
- C. The APA does not provide for any releases, but the sale is free and clear of all Encumbrances, Claims and Interests.
- D. The Sale is the conclusion of a competitive Auction, as described herein.
- E. Pursuant to Section 4.1 of the Modified Pivotal APA, the Closing will take place after regulatory approvals for the Buyer to operate the Debtors' business have been obtained, with an outside Closing Date of the "Regulatory Approval Date," 180 days after the Regulatory Filing Date, which is 14 days after entry of the order approving the Sale. Section 7.3 also provides that the Debtors shall use their commercially reasonable efforts to have the Bankruptcy Court schedule a hearing on the Sale Motion and Plan Confirmation as soon as possible so as to obtain entry by the Bankruptcy Court of the Sale Order and Confirmation Order by no later than February 1, 2011. Section 12.1(c)(1) provides that the Buyer may terminate the Sale if the Court does not enter the Sale Order by February 1, 2011.
- F. There is no good faith deposit under the Modified Pivotal APA.
- G. The Debtors will continue to operate their business prior to Closing. If the Sale Closing takes place before all regulatory approvals have been obtained, under the Regulatory Approval Deadline, Section 2.5(a) of the

Amended Pivotal APA provides for a post-Closing management agreement to be prepared and entered into under which the Debtors would continue to operate the portion of the business for which regulatory approval has been delayed pending receipt of such approval.

H. The Modified Pivotal APA provides for Sale proceeds to be used in accordance with the Plan which is expected to be confirmed contemporaneously with approval of the Sale. Section 3.1(b) of the Modified Pivotal APA provides:

(b) The purchase price for the Purchased Assets (the “Purchase Price”) shall be an amount not to exceed \$28,643,000 (plus assumption of Assumed Liabilities), as follows:

- (i) An amount equal to the Sale Facility, which will fund
 - (A) The Existing DIP Payment Amounts in the estimated amount of \$10,583,000
 - (B) An amount not to exceed \$9,060,000 consisting of the sum of the following (w) Cure Amounts (estimated at \$6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders), plus (x) Priority Claims (estimated at \$706,000), plus (y) \$1,500,000 for the Fee Payment Cap;
 - (C) Credit bid of \$9,000,000 of the Pre-Petition Facility, which Buyer may assume and satisfy post-Closing, in its sole discretion;
- (ii) plus assumption of the Assumed Liabilities.

I. Section 10.1 of the Modified Pivotal APA provides that the Debtors will seek to include in the Sale Order with respect to this Agreement a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes under Section 1146(a) of the Bankruptcy Code.

J. Sections 10.1 and 13.5 of the Modified Pivotal APA provides for

the Debtors' continued access to their books and records after the Closing.

K. Most avoidance actions are not sold under the Modified Pivotal APA, but Section 2.2(f) and Schedule 2.2(f) provide an exception for Avoidance Actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business, and designated by Buyer prior to the Closing. No Avoidance Actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer's written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv).

L. The Modified Pivotal APA includes provisions on successor liability. Section 7.1 provides for the Sale Order to be in a form acceptable to the Buyer, and requires specifically that it contain acceptable language: (xviii) providing that Buyer is not a successor in interest to Sellers or the business of Sellers with respect to all parties having notice of the sale. Section AA of the proposed Sale Order (Exhibit B) finds that the Buyer would not have agreed to the Purchase without a limitation of successor liability, extensively defined. Section BB of the Sale Order finds the Buyer is not a successor. Sections 5 and 9 of the proposed Sale Order include provisions limiting any successor liabilities.

M. The Modified Pivotal APA provides for a sale free and clear of Encumbrances, Claims and Interests, but there are no applicable possessory

licenses or leaseholds.

N. The Modified Pivotal APA provides in Section 3.1(b), (d)(1) for the sale to be accomplished by a credit bid of the DIP Facility and Pre-Petition Debentures acquired by the Purchaser, and by an increase in the DIP Facility in the form of a Sale Facility. Section 14 of the proposed Sale Order authorizes such a credit bid.

O. The Motion does not request relief from Bankruptcy Rule 6004(h).

25. Debtor 20/20 Technologies I, LLC has a wholly-owned U.K.subsidiary, Magenta netLogic Limited, UK (“Magenta”). The Modified APA provides that upon the direction of Pivotal GC as Buyer, assets of Magenta may be transferred to the Debtors, in consideration for release and extinguishment of intercompany notes, as an alternative to acquiring the equity ownership of Magenta as one of the Debtors’ Assets. The Intercompany indebtedness owed by Magenta to the Debtors is \$10,593,374 as of November 30, 2010. The book value of Magenata’s assets as of that date is \$10,344,825, and the Debtors’ best estimate of the fair market value of Magenta’s assets is \$1.0 million. The Debtors have used some of their operating revenue to pay Magenta operating costs, but Magenta has not received any prepetition or post-petition advances from any prepetition or post petition lender of the Debtors. The proposed Sale Order includes a finding that a transfer of Magenta’s assets to its Debtor parent in satisfaction of intercompany debt is for fair value.

Resolution of Objections to the Sale to Pivotal GC

26. Pivotal GC has withdrawn the Debenture Holders Objection, GC Newco Objection, and the Stalking Horse Bid, and withdrawn the support of the Debenture

Holders and Tranche B DIP Lenders for a sale to GTT. The GTT Joinder has no effect upon withdrawal of the Debenture Holders Objection.

27. The USAC Objection is resolved as follows:
- a. Debtors shall continue to pay USF Obligations² incurred post-petition when invoiced and due in the ordinary course. Within 10 days of the Sale Closing, the Debtors shall pay to USAC any and all invoiced and unpaid USF Obligations which arose on or after the Petition Date through the date of the Closing;
 - b. Debtors shall treat USAC's pre-petition claim for unpaid USF Obligations with other unsecured claims under Debtors' Plan.
 - c. All USF Obligations invoiced by USAC prior to the Sale Closing which arise as a result of Annual True-Ups will be allocated between pre-petition and post-petition periods; the pre-petition portion of the Annual True-Ups will be included in the USAC unsecured claim, and the portion allocated to the post-petition period will be paid when due.
 - d. The Buyer shall pay when due any and all post-Closing USF Obligations as invoiced by USAC including, without limitation:
 - i. all USF Obligations invoiced by USAC on or after the date of the Closing;
 - ii. all USF Obligations invoiced by USAC after the date of the Closing which may arise as a result of the Annual True-Ups, regardless of the revenue period covered, provided that only

² USF Obligations, Annual True-Ups and Annual Revenue Reports have the meanings ascribed thereto in the USAC Limited Objection.

the portion of USF Obligations determined by Annual True-Ups allocated to the post-petition period will be paid, while the portion due pre-petition is discharged; and

- iii. all USF Obligations invoiced by USAC after the Closing which arise as a result of revised or amended Annual Revenue Reports submitted by or on behalf of the Debtors, regardless of the revenue period covered, provided that only the portion of USF Obligations determined by revised or amended Annual Revenue Reports allocated to the postpetition period will be paid, while the portion due prepetition is discharged.
- e. In the event that any Annual True-Up conducted by USAC after the date of the Closing results in the issuance of credits toward USF Obligations, the Buyer shall be entitled to the full value of those credits, regardless of the revenue period covered (except that USAC shall first apply any such credits to its outstanding pre-petition or post-petition claims, if any, as applicable);
- f. In the event that the Buyer, the Debtors, or any entity on the Debtors' behalf timely submits a revised or amended Annual Revenue Report that results in the issuance of credits toward USF Obligations, the Buyer shall be entitled to the full value of those credits regardless of the revenue period covered by that revised or amended Annual Revenue Report (except that USAC shall first apply any such credits to its outstanding pre-petition or post-petition claims, if any, as

applicable);

- g. The Debtors shall timely submit all Quarterly and Annual Revenue Reports which become due on or before the date of the Closing;
- h. The Buyer shall timely submit all Quarterly and Annual Revenue Reports that become due after the date of the Closing and, if those Annual Revenue Reports cover revenue periods prior to the Closing date, the Buyer shall include the Debtors' pre-Closing revenues; and
- i. Nothing in the Sale Order or in connection with the Sale shall prohibit, alter or limit USAC's rights to (i) audit the Debtors' reported contributor revenues, including with respect to pre-sale and pre-petition periods, (ii) assess and invoice any USF Obligations resulting from any such audit, and (iii) pursue all of USAC's rights related to any such audit including, without limitation, amending previously filed claims against the Debtors.

28. The Capstone Objection is not an objection to the Sale, but rather claims entitlement to fees related to the Sale. Its fee claim will be addressed in connection with Capstone's fee applications.

The Sale Order Should be Entered on the Terms Proposed.

A. The Sale should be Approved as an Exercise of the Debtors' Sound Business Judgment.

29. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although Bankruptcy Code section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in

this district and elsewhere have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3d Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Eagle Picher Holdings, Inc., 2005 Bankr. LEXIS 2894, at *3 (Bankr. S.D. Ohio 2005). Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.' In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995); see also In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions").

30. The sale of a debtor's assets is appropriate where there are sound business reasons behind such a determination. See Myers, 91 F.3d at 395; see also Stephens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986) (sale of substantially all assets of estate authorized where "a sound business purpose dictates such action"); In re Del & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999). The Debtors have a sound business justification for selling their Assets pursuant to the process employed by the Debtors. Based on the results of their analysis of the Debtors' ongoing and future business prospects, the Debtors' management and team of financial advisors have concluded that a sale of all of the Assets is the best method to maximize recoveries to

the estates. Maximization of the Assets' value is a sound business purpose warranting authorization of any proposed sale.

31. The Debtors have finished a fair and open process that obtained the highest and best offer such that the Debtors could confirm a plan and benefit the Debtors' creditors. The fairness and reasonableness of the consideration offered by the Debtors were, in fact, tested by the market place.

(i) A Sound Business Purpose Exists for the Sale.

32. The Debtors have a sound business justification for entering into this transaction, including satisfying super-priority, secured claims of DIP Lenders, satisfying the secured Debenture Holders' claims acquired by Pivotal GC, satisfying the claims of Mission Critical Vendors, and funding bankruptcy-related costs of the estates through confirmation a chapter 11 plan that effectuates a discharge of the remaining claims, interests, liens and other "Excluded Liabilities" not assumed as part of the sale pursuant to Sections 541 and 1141 of the Bankruptcy Code.

33. Indeed, it was only after (a) potential alternatives were evaluated, (b) the transaction was aggressively marketed, (c) multiple rounds of competing proposals were evaluated and analyzed; and (d) all of the foregoing was presented to the members of the board (who, in conjunction with advice from experienced professionals, discharged their fiduciary duties, exercised sound and appropriate business judgment and determined to pursue the Sale on the terms of the APA, subject to competitive bidding sanctioned by the Court).

34. Thus, for the reasons set forth herein, as will be further shown at the Sale Hearing, because the Modified APA constitutes the highest or otherwise best offer

for the Assets to address the claims of the most creditor constituencies, on balance of the facts and circumstances of moment, and provides greater recovery for these estates than any known or practicably available alternative, the Debtors submit that the execution thereof represents sound reasonable business judgment.

(ii) The Acquisition Price Reflects a Fair Value Transaction.

35. It is a well-settled that, where there is a fair open auction process, a full and fair price is presumed obtained for the assets sold, as the best way to determine value is exposure to the market. See Bank of Am. Nat'l Trust & Sav. Ass'n. v. LaSalle St. P'ship, 526 U.S. 434, 457 (1999); see also In Re Trans World Airlines, Inc., No. 01-00056, 2001 Bankr. Lexis 980, at *13 (Bankr. D. Del. April 2, 2001) (while a "§ 363(b) sale transaction does not require an auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction"). This is especially true here, where the Acquired Assets and related transaction have both been subjected to an extensive marketing process, reviewed by outside professional firms and intensively scrutinized by the Debtors and their retained advisors.

(iv) The Sale has been Proposed in Good Faith and Without Collusion and the Successful Bidder is a "Good Faith Purchaser"

36. While the Bankruptcy Code does not define "good faith," the Third Circuit has held that "the phrase encompasses one who purchases in 'good faith' and for 'value.'" In re Abbotts Dairies, 788 F.2d at 147 (to constitute lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take

grossly unfair advantage of other bidders); see also In re Perona Bros., Inc., 186 B.R. 833, 839 (D.N.J. 1995); In re Bedford Springs Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989).

37. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) ("[t]ypically, the misconduct that would destroy a [buyer]'s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders"); see also In re Angelika Films 57th, Inc., Civ A. No. 97-2239 (MBM), 1997 WL 283412, *7 (S.D.N.Y. May 29, 1997); In re Balcalis, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct in the course of the sale proceedings." In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1998 (7th Cir. 1978)).

38. The Debtors submit Pivotal GC is or would be a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and the Modified APA, is or would be a good faith agreement on arm's-length terms entitled to the protections of section 363(m) of the Bankruptcy Code. First, the consideration to be received by the Debtors pursuant to the Modified APA is substantial, fair and reasonable. Second, the parties entered into the Modified APA in good faith, and after extensive, arm's-

length negotiations, during which both parties were represented by competent counsel of similar bargaining positions. Third, there is no indication of any "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders" or similar conduct that would cause or permit the Sale or APA to be avoided under section 363(n) of the Bankruptcy Code. Finally, Pivotal GC's offer was evaluated and approved by the board in consultation with the Debtors' professionals. Accordingly, the Debtors believe that Pivotal GC and Modified APA should be entitled to the full protections of Section 363(m) of the Bankruptcy Code.

B. The Sale Should be Approved "Free and Clear" Under § 363(f).

39. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As Bankruptcy Code section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary to meet one of the five conditions of section 363(f). Citicorp Homeowners Servs., Inc. v. Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988); (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that if any of the five conditions of § 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

40. Finally, the Sale Order will provide that the distribution of Sale

Proceeds will be pursuant to the terms of an Modified APA or confirmed Plan.

The Terms of the Assumption and Assignment of the Contracts with Mission Critical Vendors

41. In connection with the Pivotal GC Acquisition, the Debtors intend to assume and potentially assign contracts with Mission Critical Vendors to Pivotal GC.

42. The Sales Procedure Order set forth the process whereby the Debtors' contracts with Mission Critical Vendors could be assumed and assigned to the winning bidder. The SPO contained a process for the fixing of cure amounts and the terms of cure. Under the SPO, parties who did not object to the cure amounts or the terms of cure were deemed to have accepted the cure amounts and terms set forth in the Debtors' cure schedule (DE 369).

43. Only a limited number of Mission Critical Vendors objected to the cure amounts and terms. Those creditors who objected to either the cure amounts or terms of the cure are the following, with Debtors' proposed treatment:

- a. AT&T objected to the cure amount, asserting that there were disputed amounts due in addition to the amounts put forth in the cure schedule. It also objected to the term out, demanding that, after applying 100% of the adequate assurance deposit to the amount due, the balance be paid in one lump sum within 3 days of exit. AT&T further demanded that the Cerner escrow agreement stay in place. Debtors propose to pay \$4,226,777 to satisfy all pre-petition undisputed amounts, and to pay \$433,000 as full settlement for all disputed amounts. Debtors propose to apply the \$1,021,006.42 adequate assurance deposit held by AT&T against the total amounts due, with the net due in cash on the

Plan Effective Date. Debtors and Pivotal GC after Closing will keep the Cerner escrow agreement in place, as requested.

- b. Verizon objected to any term-out of the pre-petition amounts due, and proposed that 100% of the pre-petition amounts, net of applying 100% of the adequate assurance deposit, be payable in a single lump sum upon exit. Verizon also sought adequate assurance of future performance, demanding that the Cerner escrow agreement remain in place, and that there be EITHER a 60 day deposit for all new orders going forward OR that the new company demonstrate financial strength by showing \$4 million of working capital on its balance sheet. Verizon also objected that the cure schedule did not address its outstanding \$1.7 million claim related to the WorldCom bankruptcy, and reserved its right to off-set prepetition amounts owed from Verizon to Global Capacity as a remedy of that claim. Debtors propose to pay \$1,625,765.82 to satisfy all pre-petition undisputed amounts. Debtors would apply the \$603,285.88 adequate assurance deposit held by Verizon against the total amounts due, with the net due in cash on the Plan Effective Date. Debtors and Pivotal GC upon Closing will keep the Cerner escrow agreement in place, as requested. Debtors will separately address Verizon's requests for future deposits and/or minimal cash balances, given the structure, backing and health of the business going forward under ownership of Pivotal GC. Debtors expect to reach an agreement on the offset of pre-petition

amounts owed by Verizon to GC and the WorldCom related claim.

- c. Qwest objected to the total amount owed in the cure schedule, claiming the amount was understated by the amount of Qwest's administrative (post-petition) claim. The Modified APA and Plan are clarified to confirm that all post-petition amounts will continue to be paid on a current basis, and that Pivotal GC will include in the Assumed Liabilities the accrued, unbilled current amounts due on the Closing Date and will pay such amounts when invoiced and due in the ordinary course post-Closing. Qwest also objected to any term out, and objected to the use of the adequate assurance deposit as part of the cure. Debtors propose to pay \$718,976.05 to satisfy all pre-petition undisputed amounts, satisfied in part by applying the \$553,355.56 adequate assurance deposit held by Qwest against the total amounts due, with the net due in cash on the Plan Effective Date. Debtors and Pivotal GC propose to maintain an adequate assurance deposit going forward of \$497,184 (one month current MRC), of which \$100,000 already exists in the form of a letter of credit.
- d. Level 3 objected to the 12 month term out and the use of the adequate assurance deposit to cure pre-petition amounts due. It agreed to a lump sum payment of 60% of prepetition amounts due on exit, with 40% paid in equal payments in the first 3 months following exit. It sought an adequate assurance deposit of one month's run-rate for all post-petition services in place, and agreed to refund the adequate

assurance deposit being held on exit with new deposits / LOC in place. Level 3 agreed to revisit the requirement for deposits after 6 months of timely payments post-exit. The Debtors will pay \$805,794.88 to satisfy all pre-petition undisputed amounts, of which \$252,458.21 will be in the form of application of the adequate assurance deposit held by Level 3 against the total amounts due, with the net due in cash on the Closing Date/Plan Effective Date. Level 3 will receive and Pivotal GC will maintain an adequate assurance deposit going forward of \$134,548 (one month current MRC).

- e. ITS Communications, Inc. Its Contract has been rejected [DE 156], mooted its objections to assumption and Cure;
- f. Above Net contested the amount listed on Schedule 2.3(c) as the Cure Amount, but the dispute concerns postpetition amounts billed. Schedule 2.3(c) accurately sets forth the prepetition amount due. The Debtors are current on postpetition amounts invoiced, and the Plan Modification and Modified APA provisions confirming that Pivotal GC will include accrued but unbilled current amounts due in the Assumed Liabilities satisfies the remainder of AboveNet's concerns.
- g. Oracle America objected that the specific Contract or Contracts being assumed were unclear. The Debtors have clarified with Oracle the specific agreements being assumed and assigned, *i.e.* Debtors will assume and assign Oracle service contract #4961155, which was paid current in November 2010 and has no pre-petition amounts due.

Contract #84569 lapsed in November 2010 and was not renewed.

- h. ColoSpace, Inc. contested the Cure Amount. Schedule 2.3(c) to the Modified APA includes the Cure Amount sought by ColoSpace.
- i. Hobbs Brook Management LLC and 265 Winter LLC, questioned the Debtors' evidence of ability to continue performing under this un-defaulted lease as owned by Pivotal GC. Debtors believe that the structure, backing and health of the business going forward under ownership of Pivotal GC, with a continued stream of revenue and debts discharged, is sufficient to meet the adequate assurance requirements of § 365(f)(2). The request of this landlord for a deposit in the amount of \$104,309.31, representing seven months' rent months' rent, is rejected
- j. Orbitz, LLC. Its Contract is being rejected, as shown on Schedule 2.1(c)(ii) to the Modified APA, which does not include Orbitz, mooted assumption and Cure objections.
- k. BCE Nexxia Corporation. Its Contract Cure issues will be resolved separately in conjunction with the resolution of Adversary Number 10-53164 and the separate motion to assume and assign its Contracts [DE 438].

44. The Debtors and Pivotal GC believe that prior to the time this Motion is heard that they will reach an agreement as to cure amounts and the terms of assumption with the Contract and Real Property Lease counter-parties listed above.

WHEREFORE, the Debtors respectfully request that the Court enter an Order

approving the Modified Asset Purchase Agreement of Pivotal Global Capacity LLC (“Pivotal GC”) for the Acquisition of the Debtors’ Assets Under or in Conjunction with its Plan of Reorganization, Consummation of a Transaction with Pivotal GC and Assumption and Assignment of Mission Critical Vendor Contracts and that the Court grant them such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
January 13, 2011

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

/s/ Francis A. Monaco, Jr.

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ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT**(this "Agreement"), dated as of January 12, 2011, by and among Capital Growth Systems, Inc. d/b/a Global Capacity Group, Inc., a Florida corporation (the "Company"), the direct or indirect subsidiaries of the Company set forth on the signature pages hereto and their subsidiaries (together with the Company, each a "Seller," and collectively, the "Sellers") and Pivotal Global Capacity LLC (together with its successors, assigns and/or designees, the "Buyer").

RECITALS

WHEREAS, Sellers are engaged in the business of providing telecom information and logistics solutions to a global client set consisting of systems integrators, telecommunications companies, and enterprise customers (collectively, the "Business");

WHEREAS, on July 23, 2010 (the "Petition Date"), the Sellers commenced voluntary petitions for relief (the "Bankruptcy Cases"), pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"); and

WHEREAS, Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, substantially all of the assets owned and used by Sellers in connection with the Business (other than those assets specifically excluded hereby), (or, in the event of an Alternative Transaction, as defined herein, to acquire equity interests of the Company or one or more of its subsidiaries), all on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I **DEFINITIONS**

1.1 In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement, as amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement. Capitalized terms not defined herein have the meanings set forth or used in the Bankruptcy Code or Plan.

"**Accounts Receivable**" has the meaning specified in Section 2.1(h).

"**Administrative Expense Claims**" shall have the meaning set forth in the Plan, as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers including the amount of Professional Fees.

"**Affiliate**," means, with respect to any Person, any other Person which directly or indirectly Controls, is Controlled by or is under common Control with such Person.

“**Agreement**” has the meaning specified in the preamble.

“**Alternative Transaction**” means any sale, transfer, lease or other disposition, directly or indirectly, of any Purchased Assets or any substantial portion of the Business (or any agreement or understanding to do any of the foregoing) pursuant to any transaction or series of transactions to Buyer, including through the purchase of assets of the Company or one or more of its subsidiaries or through the acquisition of Shares or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term “Purchased Assets” to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, as authorized by the Plan, to be effectuated prior to Closing.

“**Assignment and Assumption Agreement**” has the meaning specified in Section 3.1(e)(iii).

“**Assumed Liabilities**” has the meaning specified in Section 2.3.

“**Auction**” means the auction for the sale of the Purchased Assets contemplated by the Bidding Procedures Order.

“**Bankruptcy Cases**” has the meaning specified in the Recitals, and includes Adversary Proceedings by or against any of the Sellers.

“**Bankruptcy Code**” has the meaning specified in the Recitals.

“**Bankruptcy Court**” has the meaning specified in the Recitals.

“**Bid Submission Deadline**” means the deadline for submission of bids as established pursuant to the Bidding Procedures Order.

“**Bidding Procedures Order**” means the Order (a) Approving Procedures in Connection With Sale of Substantially All of the Debtors' Assets; (b) Scheduling Auction and Hearing to Consider Approval of Sale; (c) Approving Procedures Related to Assumption of Certain Executory Contracts and Unexpired Leases; (d) Approving Form and Manner of Notice Thereof; and (e) Granting Related Relief, entered by the Bankruptcy Court on August 24, 2010 (Docket No. 171), as modified by the Notice of Second Modification of Bidding Procedures filed on October 13, 2010 (Docket 316) and the Notice of Change of Auction Deadline Dates and Sale Hearing dated October 8, 2010 (Docket 305).

“**Bid Procedures**” means those Bid Procedures approved by the Bidding Procedures Order.

“**Business**” has the meaning specified in the Recitals.

“**Business Day**” means any day which is not a Saturday, Sunday or a statutory holiday in the State of Delaware.

“**Buyer**” has the meaning specified in the preamble, acting in its capacity as successor Lenders.

“**Buyer Documents**” has the meaning specified in Section 6.2.

“**Closing**” has the meaning specified in Section 4.1.

“**Closing Cash Payment**” an amount, if any, in cash due and payable at Closing equal to the Purchase Price less the Credit Bid Amount less amounts attributable to Assumed Liabilities, which may be funded through the Sale Facility.

“**Closing Date**” has the meaning specified in Section 4.1.

“**COBRA**” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state law.

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

“**Company**” has the meaning specified in the preamble.

“**Company SEC Reports**” has the meaning specified in Section 5.12

“**Confirmation Order**” means the final, nonappealable order of the Bankruptcy Court that confirms the Plan, which has not been stayed or appealed (other than as consented to by Buyer in its sole discretion).

“**Contracts**” has the meaning specified in Section 2.1(c).

“**Control**” means the power, direct or indirect, to direct or cause the direction of the management and policies or a Person through voting securities, contract or otherwise.

“**Credit Bid Amount**” has the meaning set forth in Section 3.1(d)(i).

“**Creditor**” has the meaning set forth in 11 U.S.C. Section 101.

“**Cure Amount**” has the meaning specified in Section 2.3(c).

“**Cure Schedule**” has the meaning specified in Section 2.3(c).

“**DIP Facility**” means that certain Debtor in Possession Loan and Security Agreement dated as of July 23, 2010 by and among the Sellers, and the Buyer as successor in interest to the Tranche A DIP Lender and the Tranche B DIP Lenders effective December 15, 2010.

“**DIP Facility Budget**” is a working capital budget of the Debtors continuing through the Closing, and shall include all estimated revenue and expenses, including Pre-Closing Costs. Effective as of the Sale Closing, the DIP Facility will be increased by the Sale Facility to fund

the Purchase Price, provided that Buyer may advance portions of the Sale Facility prior to the Closing in its sole discretion.

“**DIP Lenders**” means, the Buyer as successor in interest to the Tranche A DIP Lender and the Tranche B DIP Lenders.

“**DIP Order**” means the final order of the Bankruptcy Court approving the DIP Facility as approved by the Court as Docket 125, the rights under which were assigned to Buyer as successor in interest to the DIP Lenders by order of the Court at Docket 512.

“**Employee Plans**” has the meaning specified in Section 5.8(a).

“**Employees**” means all individuals, whether or not actively at work as of the date hereof, who are employed by one or more of the Sellers or their subsidiaries in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof and prior to the Closing to the extent Buyer approves the hire of such individuals after the date of this Agreement by prior written consent.

“**Encumbrance**” means any lien, claim, charge, security interest, encumbrance, mortgage, pledge, easement, option, right of first refusal, conditional sale or other title retention agreement, defect in title, covenant or other interests or restrictions of any kind.

“**Environmental Law**” means any Law relating to pollution or protection of human and occupational health and safety and the environment, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, handling, discharge, Release, threatened Release of or exposure to Hazardous Substances.

“**Equipment**” has the meaning specified in Section 2.1(a).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” has the meaning specified in Section 5.8(a).

“**Exchange Act**” means the Securities and Exchange Act of 1934, as amended.

“**Excluded Assets**” has the meaning specified in Section 2.2.

“**Excluded Liabilities**” has the meaning specified in Section 2.4.

“**Executive Officer**” means with respect to a corporation the president, chief executive officer, chief operating officer, chief financial officer; with respect to a partnership, the general partners, and; with respect to a limited liability company, the managers; or their functional equivalents.

“**Existing DIP Payment Amounts**” means the outstanding principal drawn by Sellers and accrued and unpaid interest and all costs and fees pursuant to the DIP Facility on the Closing Date.

“**FCC**” means the United States Federal Communications Commission.

“**Fee Claim**” means a Claim by a Professional for compensation, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) (excluding any fees or expenses under sections 503(b)(3) or (4)) or 1103(a) of the Bankruptcy Code in connection with the Bankruptcy Cases. For the avoidance of doubt, fees or expenses sought under sections 503(b)(3) or (4) or payable under section 506(b) are not Fee Claims.

“**Fee Payment Cap**” means the sum of \$1,500,000 payable at the Closing (reduced by any pre-Closing discretionary advances, per Section 3.1(c)) by Pivotal Global Capacity, LLC to be used to satisfy Fee Claims, U.S. Trustee Fees for the post-Closing period and the distributions made in connection with the Closing and Wind Down Budget obligations.

“**Federal Telecommunications Laws**” means the Communications Act of 1934, as amended, including amendments made by the Telecommunications Act of 1996, 47 U.S.C. Section 151 et seq., and the rules, regulations and orders of the FCC.

“**Financial Statements**” has the meaning specified in Section 5.12.

“**GAAP**” means generally accepted accounting principles in the United States as of the date hereof as applied in a manner consistent with the Sellers’ historical accounting policies.

“**Governmental Body**” means any foreign, federal, state, local or other governmental authority or regulatory body.

“**Hazardous Substances**” means any wastes, substances, products, pollutants or materials, whether solid, liquid or gaseous, that (i) is or contains asbestos, polychlorinated biphenyls, radioactive materials, oil, petroleum or any fraction thereof, (ii) requires removal, remediation or reporting under any Environmental Law, or is defined, listed or identified as a “contaminant”, “pollutant”, “toxic substance”, “toxic material”, “hazardous waste” or “hazardous substance” or words of similar meaning and regulatory effect thereunder or (iii) is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is regulated as such by any Governmental Body under any Environmental Law.

“**Intellectual Property**” has the meaning specified in Section 2.1(e).

“**Knowledge**” means the actual knowledge of the Person, including, in the case of a corporation, partnership or limited liability company, the knowledge attributed to such entity based on the actual knowledge of its Executive Officers after due investigation and inquiry.

“**Laws**” means any law, statute, ordinance, regulation, rule, code or rule of common law or otherwise of, or any order, judgment, injunction or decree issued, promulgated, enforced or entered by, any Governmental Body.

“**Lease Assignments**” has the meaning specified in Section 4.2(a)(iii).

“**Legal Proceeding**” means any judicial, administrative or arbitral actions, demands, suits, proceedings (public or private), audit or investigation by or before a Governmental Body or arbitral tribunal excluding any liquidation of claims.

“**Lenders**” means Buyer as successor, collectively, to the Pre-Petition Lenders and the DIP Lenders.

“**Liability**” means any debt, claim, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) and including all costs and expenses relating thereto.

“**Magenta**” means Magenta netLogic Limited, UK. For purposes of this Agreement, all assets and liabilities of Magenta shall be shown on the appropriate Schedules attached hereto, and shall be included in the Purchased Assets acquired under this Agreement at the election of the Buyer.

“**Material Adverse Change**” means a state of facts, event, change or effect with respect to the Business, Purchased Assets, the Assumed Liabilities or the enforceability of any Contract that results in a material adverse effect on the value of the Purchased Assets or the Business, taken as a whole (or, in the event of an Alternative Transaction, the value of the Shares), but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (a) changes in economic, regulatory or political conditions generally, and (b) the usual, customary or ordinary consequences of the filing by a debtor of a Bankruptcy Case contemplating a reorganization or liquidation of the debtor’s assets.

“**Mission Critical Vendors**” means the utility vendors and other critical vendors as identified on Schedule 2.3(c).

“**Modified Plan**” has the meaning specified in Section 7.5.

“**Non-Transferred Assets**” has the meaning specified in Section 2.5.

“**Non-Transferred Assets Documents**” means such bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of all of Sellers’ right, title and interest in the Non-Transferred Assets to Buyer.

“**Order**” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“**Ordinary Course of Business**” means the ordinary and usual course of normal day to day operations of the Business since the Petition Date.

“**Permits**” means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

“**Permitted Encumbrance**” means (i) any of those Encumbrances set forth on Schedule 1.1(a) and/or (ii) any Encumbrance that Buyer agrees in writing to accept.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Body.

“**Personal Property**” has the meaning specified in Section 2.1(a).

“**Petition Date**” has the meaning specified in the Recitals.

“**Plan**” has the meaning specified in Section 7.5.

“**Plan Effective Date**” means the first Business Day on which all conditions set forth in the Plan have been satisfied or waived (other than those that, by their terms, will be satisfied contemporaneously with or immediately upon the occurrence of the Plan Effective Date) and no stay of the effectiveness of the Confirmation Order is in effect.

“**Pre Closing Costs**” consists of operating expenses from the Petition Date through the Closing Date to the extent not covered by the Sellers’ operating income, in accordance with the DIP Facility Budget. Pre Closing Costs shall not duplicate any amounts that have previously been paid by the DIP Facility.

“**Pre-Petition Facility**” means, collectively, the secured financing facilities provided by the Pre-Petition Lenders to Sellers before the Petition Date and all debentures issued to, and other documentation entered into with or in favor of, the Pre-Petition Lenders in connection therewith.

“**Pre-Petition Lenders**” means the Buyer as successor to holders of the August 2009 Debentures, the July 31, 2009 Debentures, the VPP 2009 Debentures, the November 2008 Debentures and the March 2008 Debentures (as each of those terms is defined in the Plan).

“**Principal Amount**” has the meaning specified in Section 3.1(a).

“**Priority Claims**” shall have the meaning set forth in the Plan as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers.

“**Professional Fees**” shall mean any fees to be paid by Debtors due from, paid to or on behalf of a professional (including Capstone Investments) as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers.

“**Purchase Price**” has the meaning specified in Section 3.1(b).

“**Purchased Assets**” has the meaning specified in Section 2.1.

“**Qualified Bidder**” means any Person considered to be a qualified bidder in the Auction pursuant to the Bidding Procedures Order.

“Real Property Leases” has the meaning specified in Section 2.1(b).

“Regulatory Approval Date” shall be the date 180 days following the Regulatory Filing Date.

“Regulatory Dates” shall be the Regulatory Filing Date and the Regulatory Approval Date.

“Regulatory Filing Date” shall be the date 14 days following the Sale Order Date.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration at, into or onto the environment, including movement or migration through or in the environment, whether sudden or non-sudden and whether accidental or non-accidental, or any release, emission or discharge as those terms are defined in any applicable Environmental Law.

“Retained Causes of Action” means any and all claims and causes of action set forth on Schedule 2.2(f).

“Sale Facility” shall be an increase in the DIP Facility funded as of the Closing Date in an amount up to the portion of the Purchase Price and shall consist of the amount of the Existing DIP Payment Amounts and the amounts described in Section 3.1(b)(ii), equal to the Fee Payment Cap to pay Fee Claims, U.S. Trustee Fees incurred as a result of Closing disbursements and post-Closing, and Wind Down Budget in an aggregate amount not exceeding \$1,500,000, Cure Amounts to the extent not paid from operating funds estimated at \$6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders, and Priority Claims estimated at \$706,000 as agreed by the Buyer and Sellers in the Sale Facility Budget.

“Sale Facility Budget” shall consist of the Fee Payment Cap, Cure Amounts, and Priority Claims (including postpetition Taxes). The Sale Facility Budget is an increase in the DIP Facility Budget (which covered Administrative Expenses) to fund the Purchase Price at the Closing.

“Sale Hearing” has the meaning specified in Section 7.3.

“Sale Motion” means the motion filed in the Bankruptcy Court by the Sellers on August 12, 2010 as Docket 115.

“Sale Order” has the meaning specified in Section 7.1.

“Sale Order Date” shall be the date 15 days after the Sale Order is entered, provided there is no stay or appeal.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller” and **“Sellers”** have the meanings specified in the preamble.

“**Sellers Documents**” has the meaning specified in Section 5.2.

“**Shares**” means all the issued and outstanding equity securities of the Company and, at the option of Buyer, one or more of the Sellers or other subsidiaries of the Company.

“**State Regulatory Commission**” means the agency, board, commission, department, or other instrumentality of a State, Territorial, District of Columbia, or Commonwealth government within or associated with the United States, having jurisdiction under that government’s laws to regulate the provision of intrastate telecommunications services.

“**State Telecommunication Laws**” means state statutes governing intrastate telecommunications in the States of the United States, the District of Columbia, and Territories and Commonwealths within or associated with the United States (the “**States**”), and the rules, regulations, and orders of the State Regulatory Commissions applicable to such intrastate telecommunications.

“**Straddle Period**” has the meaning specified in Section 10.3.

“**Straddle Period Taxes**” has the meaning specified in Section 10.3.

“**Tax**” (and, with correlative meaning, “**Taxes**” and “**Taxable**”) means:

- (i) any federal, state or local net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and
- (ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax sharing arrangement or Tax indemnity agreement.

“**Tax Return**” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

“**Taxing Authority**” means any federal, state, local or foreign government, or any agency, instrumentality or employee thereof, charged with the administration of any Law relating to Taxes.

“**Telecommunications Laws**” means the Federal Telecommunications Laws and the State Telecommunications Laws.

“**Tranche A DIP Lender**” means Downtown CP-CGSY, LLC.

“**Tranche A Loan**” means the loan by Buyer as successor to the Tranche A DIP Lender pursuant to the DIP Facility.

“**Tranche B DIP Lenders**” means the Tranche B DIP Lenders party to the DIP Facility and any other Pre-Petition Lender and, with the consent of the existing Tranche B DIP Lenders, any other person that elects to become a Tranche B Lender under the DIP Facility.

“**Tranche B Loan**” means the loans by Buyer as successor to the Tranche B DIP Lenders pursuant to the DIP Facility.

“**Transfer Taxes**” means all sales (including bulk sales), use, transfer, value added, goods and services, filing, recording, ad valorem, privilege, documentary, gross receipts, registration, conveyance, excise, license, stamp or similar Taxes and fees arising out of, in connection with or attributable to the transactions contemplated by this Agreement.

“**Transferred Employees**” has the meaning specified in Section 9.1.

“**Undisclosed Contract**” has the meaning specified in Section 2.1.

“**U.S. Trustee Fees**” means fees due to the U.S. Trustee by the Sellers, before or after the Closing, arising under 28 U.S.C. § 1930(a)(6) or otherwise, and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

“**WARN**” or “**WARN Act**” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state Law, and the rules and regulations thereunder.

“**Wind Down Budget**” has the meaning ascribed to such term in the Plan, as limited to the amount agreed to by Buyer and Sellers as part of the Purchase Price.

ARTICLE II

PURCHASE AND SALE

2.1 **Purchased Assets**. Upon the terms and subject to the conditions of this Agreement, effective as of the Closing Date, in exchange for the Purchase Price, Buyer shall purchase, acquire and accept out of the bankruptcy estate of the Sellers, and the Sellers on behalf of the Sellers’ estate shall sell, transfer, assign, convey and deliver, free and clear of all Encumbrances (other than any Permitted Encumbrances) to the extent permissible under Sections 363 and 365 of the Bankruptcy Code, to Buyer, on an as-is, where is basis, with no representations or warranties except as otherwise set forth herein, all of the Sellers’ right, title and interest in, to and under the Purchased Assets (which, in the event of an Alternative Transaction involving the acquisition by Buyer of any Shares, is effected through the transfer of all such Shares) . “**Purchased Assets**” shall mean all assets, properties, interests and rights of the Sellers, other than the Excluded Assets, as of the Closing, used or useful in connection with or related to the Business, including:

(a) all tangible personal property of Sellers, including without limitation all machinery, equipment (including, without limitation, telecommunications equipment, computer equipment, routers, switches, concentrators, peripherals and related hardware) (“**Equipment**”),

furniture, fixtures, leasehold improvements and all other fixed or tangible assets owned or leased under assumed Contracts, including, without limitation, those items described on Schedule 2.1(a) (collectively, the “Personal Property”), except those items to be retained by Sellers pursuant to Section 2.2 hereto;

(b) all real property leases and subleases as set forth in Schedule 2.1(b) (the “Real Property Leases”);

(c) all of Sellers’ rights in or under (i) all contracts with customers, and all software licenses, including without limitation those listed on Schedule 2.1(c)(i) and (ii) all telecommunication circuit contracts, and call contracts with vendors, software developers and others and the equipment leases listed on Schedule 2.1(c)(ii) (collectively, the “Contracts”) and all claims and causes of action thereunder, provided that any contracts with customers not listed on Schedule 2.1(c)(i) shall be deemed included on that Schedule, unless specifically listed as excluded on Schedule 2.2(e);

(d) all of Sellers’ rights in and to security and vendor deposits, prepayments and refunds existing with respect to the assumed and assigned Real Property Leases and Contracts, including, without limitation, those listed on Schedule 2.1(d);

(e) all of Sellers’ intellectual property and intangible property, including without limitation all of Sellers’ (1) trademarks, service marks, brand names, certification marks, collective marks, d/b/a’s, domain names, logos, symbols, trade dress, product configurations, assumed names, fictitious names, Internet protocol addresses, trade names, indicia of origin, all applications and registrations for all of the foregoing, together with all goodwill associated with any of the foregoing and symbolized thereby, including all extensions, modifications and renewals or same; (2) inventions, discoveries and ideas, whether patentable or not, and all patents, registrations and applications therefore, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (3) confidential and proprietary information, trade secrets and know-how relating to the Business, including processes, schematics, databases, customer and other resource lists, formulae, drawings, prototypes, models, designs, and any confidential, secret or proprietary aspects of the Business, including, without limitation, marketing information, pricing arrangements with customers and suppliers or financial information relating to the Business; (4) all proprietary computer software of Sellers, including, without limitation, all computer programs, object code, source code, user interface, databases and documentation; (5) rights in works of authorship, including databases and other compilations of information; and (6) other intellectual property or proprietary rights owned by Sellers including without limitation those utilized in, developed in connection with or material to the Business, including without limitation any of the foregoing listed on Schedule 2.1(e) (collectively, the “Intellectual Property”) and all Contracts pursuant to which any Seller is granted a license to, or any rights under, any Intellectual Property of any third Person and all Contracts pursuant to which any Seller grants to a third Person a license to, or any rights under, any Intellectual Property;

(f) all rights of setoff and recoupment with respect to the Assumed Liabilities;

(g) all actions under 11 U.S.C. Sections 544 through 550 (except as are specifically retained by the Sellers under Schedule 2.2(f)), and all counterclaims, offsets, defenses and denials against claims of creditors, and all rights and claims of Sellers, whether known or unknown, absolute or contingent, matured or unmatured, or otherwise, against third parties whether in tort, contract or otherwise, other than those relating to or arising under the Contracts (except with respect to all matters referred to in this subsection (g), to the extent necessary to setoff against claims of Creditors or to recover claims for damages against Sellers' estates, as set forth on Schedule 2.1(g), provided that such exception does not extend to actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business, and designated by Buyer prior to the Closing. No actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer's written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv)).

(h) all accounts receivable, trade accounts and other amounts owed to any of the Sellers relating to, or arising in connection with the operation and conduct of, the Business (including overdue accounts receivable and all accounts receivable that have been billed by Sellers in advance for services or products that have not yet been provided prior to the Closing Date) and any other rights of any of the Sellers to payment from any other Seller, any subsidiary of any Seller or any third party and the full benefit of all security for such accounts or rights to payment, including, together with any and all proceeds of any of the foregoing (collectively, the "Accounts Receivable");

(i) all cash and cash equivalents whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts and including any cash collateral that is collateralizing any letters of credit, or obligation with respect thereto, assumed by the Buyer, but excluding any cash tendered as part of the Purchase Price, including all net operating income (in whatever form) to the extent not used in accordance with final orders entered by the Bankruptcy Court or in accordance with the DIP Facility Budget, prior to the Closing;

(j) at the option of Buyer, in its sole discretion, all Shares, including, without limitation, all shares of the capital stock of Magenta, whether or not an this Agreement is effected through an Alternative Transaction;

(k) all of Sellers' books of account, records, files (including those relating to customers and carriers), customer lists, invoices and similar financial books, records and information, employment records and files, and Sellers' engineering and other technical books, papers, files and records (including all data and other information stored on discs, tapes, including back up tapes, or other media) relating to the Business, provided that Sellers shall have the right to make copies of such books and records to the extent Sellers determine that they are necessary to enable Sellers to wind down Sellers' estates and/or are otherwise required for legal or regulatory reasons;

(l) all rights to enforce any and all agreements between Sellers and their respective employees relating to noncompetition, invention assignment, proprietary information and/or confidentiality; except that Seller shall retain any cause of action against any Employee for damages to the extent of loss or damage suffered by the Sellers or their estates on account of employee conduct occurring prior to the Closing Date;

(m) all other rights of Sellers relating to the Business, including, without limitation, all goodwill relating to the Business;

(n) all Permits and licenses, other than non-transferrable Permits and licenses which are not material to the Business as determined and approved by Buyer in its sole discretion;

(o) all telephone, fax numbers, carrier identification codes, other than those not transferable which are not material to the Business as determined and approved by Buyer in its sole discretion;

(p) all websites;

(q) all rights under warranties relating to the Purchased Assets; and

(r) all proceeds of insurance arising from damage to, destruction of or loss relating to the Purchased Assets or covering claims, if any, for which Buyer may have successor liability, provided, however, with respect to any successor liability claims, such proceeds shall be used solely either to satisfy such liability directly or, if Buyer or the Sellers have already satisfied such a claim, to reimburse Buyer or the Sellers to the extent of such satisfaction.

(In the event of an Alternative Transaction, the enumeration of items in 2.1(a)-(r) above shall, with respect to any entity whose Shares are being acquired, refer to such entity's right, title or interest therein, it being the intent that Buyer shall acquire such assets indirectly through the purchase of such Shares.)

Notwithstanding anything to the contrary contained herein, (x) Sellers may at any time up to the date of the Sale Hearing, supplement Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, to add any contract or lease that was not previously listed thereon, in which case such contract or lease shall be, subject to the consent of Buyer in its sole discretion, as applicable, a Purchased Asset, or (y) Buyer may, in its sole discretion, at any time prior to the Closing remove from Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, any contract or lease listed thereon, in which case such contract or lease shall be an Excluded Asset. In the case of any contract or lease the existence of which was not disclosed to Buyer in reasonable detail prior to the date hereof (an "Undisclosed Contract"), Buyer may add such Undisclosed Contract to Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, at any time prior to the date of the Sale Hearing, and Sellers shall take all actions desirable or necessary including filing any necessary or desirable motions or applications and obtaining any appropriate Orders from the Bankruptcy Court, in order to effectuate the assignment of such Undisclosed Contract to Buyer. It is the intention of the parties that all assets of Sellers other than Excluded Assets are to be included in the sale hereunder. Accordingly, if any asset of

Sellers, which is not an Excluded Asset, is not transferred to Buyer at Closing, in the sole discretion of Buyer, Sellers shall cause it to be transferred to Buyer for no additional consideration, subject to Bankruptcy Court approval including any requirement to pay any Cure Amount (which Cure Amount shall be paid by Buyer if Buyer elects to acquire such asset but without any increase in the Purchase Price, unless Buyer determines, in its sole discretion, to increase the Purchase Price therefor), including assuming and assigning any executory contracts and unexpired leases. At Buyer's option, Sellers shall cause, prior to the Closing Date, any or all assets of Magenta to be transferred to Sellers by Magenta.

2.2 **Excluded Assets.** Any provision herein to the contrary notwithstanding, the Purchased Assets shall not include any of the following assets (the "Excluded Assets"):

- (a) the Purchase Price;
- (b) at the option of Buyer, in its sole discretion, any and all Shares of the capital stock or any equity interest of any of the Sellers or any of their subsidiaries;
- (c) any: (i) confidential personnel and medical records pertaining to any Employee to the extent such records may not be transferred to Buyer pursuant to applicable Law; (ii) other books and records that the Sellers are required by Law to retain including, without limitation, Tax Returns, taxpayer and other identification numbers, financial statements and corporate or other entity filings provided, that Buyer shall have the right to make copies of any portions of such retained books and records to the extent that such portions relate to the Business or any of the Purchased Assets; (iii) any information management systems of the Sellers, other than those used in or useful in connection with or related to the Business; and (iv) (except in the event of an Alternative Transaction) minute books, stock ledgers, equity books, equity ledgers, equity certificates and stock certificates of any Seller or any of its Subsidiaries which do not constitute Purchased Assets; in each case (i)-(iv) above, subject to Buyer's ability to make copies thereof as Buyer deems necessary and proper;
- (d) assets of any Employee Plan, which shall be terminated or disposed of prior to the Closing if an Alternative Transaction is implemented;
- (e) those assets described on Schedule 2.2(e), and any Contracts and Real Property Leases not listed on Schedule 2.1(b), 2.1(c)(ii) as specifically assumed, all of which assets shall be terminated or disposed of prior to the Closing if an Alternative Transaction is implemented; Buyer may, in its sole discretion, at any time prior to Closing, move Personal Property, Real Property Leases and Contracts from Schedules 2.1(a), 2.1(b) and 2.1(c)(i) and (ii) to Schedule 2.2(e) after further due diligence; provided, however, that so moving any Personal Property, Real Property Leases or Contracts shall not result in any reduction of the Purchase Price; and
- (f) the Retained Causes of Action set forth on Schedule 2.2(f), subject to the restrictions in Section 2.1(g).

2.3 **Assumed Liabilities.** Upon the terms and subject to the conditions of this Agreement, effective as of the Closing Date, Buyer shall assume and agree to discharge the following, and only the following, Liabilities of Sellers (the "Assumed Liabilities"):

(a) all Liabilities relating to the operation of the Business acquired hereunder that arise from events, facts or circumstances that occur on or after the Closing;

(b) all of Sellers' obligations under the Contracts and the Real Property Leases acquired hereunder and obligations to pay Taxes of Governmental Units, which accrue after the Closing

(c) all of Sellers' (a) accounts payable and other obligations under the Contracts and the Real Property Leases assumed and assigned hereunder and (b) obligations to pay Taxes of Governmental Units, in each case that are current, accrued and unbilled obligations incurred postpetition, which Buyer will pay when invoiced and due in the ordinary course after Closing;

(d) all amounts payable under Section 365 of the Bankruptcy Code to cure monetary defaults under the Contracts and the Real Property Leases acquired hereunder in accordance with the Assignment Notices described in Section 7.3 herein between Sellers and the counterparty to such Contracts and Real Property Leases or as otherwise provided in an Order of the Bankruptcy Court, to the extent not previously paid by Seller as an Administrative Expense; provided, however, that Buyer's assumption of each Contract and each Real Property Lease is predicated upon the Cure Amount not exceeding the amount set forth on Schedule 2.3(c) (the "Cure Schedule") or such greater amount as the Bankruptcy Court shall determine is the Cure Amount for each Contract and Real Property Lease to be assumed by Buyer in accordance with such Assignment Notice, subject to Buyer's right to reject any of such Contracts or Real Property Leases prior to the Closing Date and further subject to Buyer's ability, in its sole discretion, to increase the Purchase Price for any additional Cure Amount which may be required prior to the Closing Date (collectively, the "Cure Amount").

For the avoidance of doubt, the parties agree that (i) the portion of the Cure Amount payable on the Closing Date shall be paid by the Sellers as an Administrative Expense (but separately allocated outside the aggregate Administrative Expense limit in the Purchase Price), using part of the Closing Cash Payment at Closing and first using any funds deemed not to collateralize the Pre-Petition Facility, (ii) Buyer's assumption of the Assumed Liabilities shall be without duplication of the expenses paid by Buyer as Pre-Closing Costs or otherwise advanced as part of the Sale Facility or DIP Facility, and (iii) any Closing Cash Payments shall be without duplication of amounts advanced as part of the DIP Facility.

2.4 **Excluded Liabilities.** Notwithstanding anything to the contrary contained in this Agreement or otherwise, Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of Sellers, direct or indirect, known or unknown, absolute or contingent, not expressly assumed by Buyer pursuant to Section 2.3 (all such liabilities and obligations not being assumed being herein called the "Excluded Liabilities"). Without limiting the generality of the foregoing, all of the following shall be Excluded Liabilities for purposes of this Agreement:

(a) all Liabilities of the Sellers relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets;

(b) all accounts payable arising from the Business (including without limitation those arising under Contracts and Real Property Leases) which accrue or arise prior to the Closing Date and which remain unpaid on the Closing Date, except insofar as they are within 2.3(c);

(c) claims of Creditors not expressly assumed hereunder;

(d) all Liabilities with respect to all Employee Plans, policies, agreements and arrangements of the Sellers and their Affiliates, including all Employee Plans, and any Liability to or in respect of, or arising out of or in connection with, the employment by any of the Sellers or cessation of employment with any of the Sellers of any Employees or independent contractors or former employees or independent contractors of any of the Sellers, including any severance obligations that arise on or prior to the Closing Date and any WARN liability associated with the termination of Employees;

(e) any and all federal or state regulatory charges or assessments in respect of operations of Sellers prior to the Closing Date, including but not limited to all universal service fund charges, federal excise taxes, FCC charges for network access, local number portability charges, telecommunications relay service charges, local communications taxes, state gross receipts taxes, state utility privilege taxes and 911 fees, other than those paid by the allocation to Priority Claims of a portion of the Purchase Price;

(f) all Taxes payable or that become payable by Sellers arising from the conduct of the Business prior to the Closing Date other than those paid by the allocation to Priority Claims of a portion of the Purchase Price (which shall encompass Taxes incurred postpetition in the course of operation of the Business, for purposes of this Agreement). All sales Taxes and universal service charges collected by Buyer attributable to a sale that occurred prior to the Closing Date shall be remitted to the appropriate Taxing Authority or universal service administrative company for credit to Sellers' account;

(g) any debt of the Sellers, except to the extent otherwise expressly included in Assumed Liabilities;

(h) any Claim or Interest or any kind or nature in any of the Shares;

(i) any liabilities or obligations of Sellers arising prior to the Closing Date, except as expressly assumed by Buyer in writing, including any obligations to any holders of Claims and/or Interests in the Sellers or affiliates thereof.

(In the event of an Alternative Transaction, the enumeration of items in 2.4(a)-(i) above shall, with respect to any entity whose Shares are being acquired, refer to such entity's liabilities and shall require the termination of such liabilities as a condition of Closing, it being the intent that Buyer shall acquire such Shares of such entity only if such liabilities of such entity have been discharged or otherwise disposed of.)

For the avoidance of doubt, amounts paid by Buyer on behalf of the Existing DIP Payment Amounts, Pre Closing Expenses, Administrative Expense Claims including Professional Fees, and Priority Claims at Closing shall be in the nature of payment of the

Purchase Price and shall be allocated by Sellers as set forth in the Plan, with Administrative Expense Claims and the Cure Amount first using any funds deemed not to collateralize the Pre-Petition Facility. No presumption shall arise as to the assumption by Buyer of any liabilities related to any of Administrative Expense Claims including Professional Fees or Priority Claims by virtue of payments of amounts allocated by Sellers to such categories.

2.5 **Non-Transferred Assets.**

(a) Notwithstanding anything in this Agreement to the contrary, the parties agree that, to the extent that as of the Closing certain of the Purchased Assets cannot be transferred to Buyer (i) pending Buyer obtaining the requisite telecommunications regulatory authorizations from State and Federal regulatory agencies and/or consent of State and Federal regulatory agencies to the transfer of such Purchased Assets or (ii) if an attempted assignment of any Contract or Real Property Lease, without the consent of any other Person that is a party thereto, would constitute a breach thereof or in any way negatively affect the rights of Buyer (unless the restrictions on assignment would be rendered ineffective pursuant to sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended), as the assignee of such Contract or Real Property Lease, as the case may be, thereunder (or, in the event of an Alternative Transaction, if the acquisition by Buyer of any Shares or other equity interests of Company or one or more subsidiaries is not consummated because certain Transferred Assets cannot be owned by Buyer or by entities whose Shares or other equity interests are owned by Buyer), Sellers shall retain title to such assets (the “Non-Transferred Assets”) and any Assumed Liabilities related to such assets, pending receipt of such authorizations and consents, and shall hold and treat such assets in accordance with the terms set forth in a management agreement to be agreed upon between Buyer and Sellers. Upon receipt from time to time of any such necessary consents, such Non-Transferred Assets as are subject to the consents so received, shall be transferred to Buyer pursuant to subsection 2.5(b) below, and Buyer shall assume all related Assumed Liabilities (or, in the event of an Alternative Transaction, the applicable Shares or other equity interests of the Company or one or more of its subsidiaries shall be transferred to Buyer or otherwise caused to be acquired by Buyer by direct purchase of such equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state).

(b) Subject to and in accordance with the terms and conditions of this Agreement and without limiting the obligations of the parties, it is hereby acknowledged, confirmed and agreed by the parties that each of the parties will execute, deliver, or cause to be delivered the Non-Transferred Asset Documents upon receipt of the consents and approvals, if any, referred to in clauses 2.5(a)(i) and 2.5(a)(ii) above. Upon delivery of such duly executed Non-Transferred Asset Documents, the requirements of Article XI below shall be deemed to be satisfied as if such Non-Transferred Assets and related Assumed Liabilities had been transferred to and assumed by Buyer at the Closing, and the Purchase Price will not be affected by Non-Transferred Assets.

2.6 **Prorations at Closing.** All items of income, expense, charges, fees and costs covered by this Agreement, to the extent earned, incurred or accrued for a period that starts before

and ends after the Closing Date, shall be pro-rated as of the Closing Date with Sellers receiving or responsible for the pro-rated amount for the period before the Closing Date and Buyer receiving or responsible for the pro-rated amount from and after the Closing Date. Such pro-rated amounts shall be determined at Closing or, if it is not possible to calculate them at that time because of insufficient information, promptly after such information becomes available. To the extent that either party requests a post-closing reconciliation of pro-rations at Closing, such reconciliation shall be made within 45 days after Closing.

2.7 **Sellers' Access to Records and Personnel.** Sellers, so long as any of them remain a debtor in a case under any chapter of the Bankruptcy Code, shall, at reasonable times and on reasonable notice, have access to all records and Transferred Employees for all actions that are reasonably necessary or reasonably proper to administer such case under the Bankruptcy Code.

ARTICLE III **PURCHASE PRICE**

3.1 **Purchase Price.**

(a) Each of the parties hereby acknowledges, confirms and agrees that the Debtors have incurred indebtedness under the DIP Facility.

(i) Buyer agrees that from subject to the terms and conditions of the DIP Facility, it will continue to fund the DIP Facility following entry of the Sale Order to the Closing Date as agreed by Buyer and Seller in the DIP Facility Budget.

(ii) Buyer shall satisfy the Existing DIP Payment Amounts on the Closing Date from the Sale Facility; provided, however that the Existing DIP Payment Amounts may be satisfied by Buyer's assumption and continued funding of the DIP Facility as part of the Sale Facility, continuing in effect all of Buyer's right, title and interests in the DIP Facility, and the Collateral for the DIP Facility.

(b) The purchase price for the Purchased Assets (the "Purchase Price") shall be an amount not to exceed \$28,643,000 (plus assumption of Assumed Liabilities), as follows:

(i) An amount equal to the Sale Facility, which will fund

(A) The Existing DIP Payment Amounts in the estimated amount of \$10,583,000

(B) An amount not to exceed \$9,060,000 consisting of the sum of the following (w) Cure Amounts (estimated at \$6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders), plus (x) Priority Claims (estimated at \$706,000), plus (y) \$1,500,000 for the Fee Payment Cap;

(C) Credit bid of \$9,000,000 of the Pre-Petition Facility, which Buyer may assume and satisfy post-Closing, in its sole discretion;

(ii) plus assumption of the Assumed Liabilities.

(c) Not later than one (1) Business Day prior to the Closing Date, the Sellers and Buyer shall cooperatively prepare a closing statement consisting of (i) the amount necessary to pay off amounts drawn on the DIP Payment Amounts; (ii) amounts attributable to the Cure Amount to be paid on the Effective Date pursuant to the Confirmation Order from an additional draw on the Sale Facility (which statement shall set forth in reasonable detail the basis for the calculation of the Cure Amount); (iii) amounts necessary to fund the Fee Payment Cap components not previously paid by the DIP Facility or Sale Facility (for the avoidance of doubt, advances by Purchaser in its discretion from the Sale Facility to satisfy amounts within the Fee Payment Cap reduce, dollar for dollar, the Sale Facility and the total amount that will be funded on the Closing for the Fee Payment Cap), amounts attributable to Priority Claims, amounts due under the Wind Down Budget (to the extent not previously paid by the DIP Facility), all to be satisfied from an additional draw on the Sale Facility. Under no circumstances shall the foregoing exceed, on an aggregate basis, the remaining Purchase Price; provided however, that all Administrative Expense Claims (as defined in the Plan) and all other claims and liabilities of Seller not expressly assumed by Buyer shall have been paid, satisfied or discharged by the Plan and the Confirmation Order, with Administrative Expense Claims along with the Cure Amount first satisfied by using any funds deemed not to collateralize the Pre-Petition Facility.

(d) At the Closing, the Purchase Price shall be payable,

(i) with respect to the DIP Facility, in the form of a credit in an amount equal to Sellers' obligations under the DIP Facility, in accordance with § 363(k) of the Bankruptcy Code (the "Credit Bid"), or by assumption of the DIP Payment Amounts by Buyer;

(ii) with respect to amounts attributable to the Cure Amount, the Fee Payment Cap, and the Priority Claims in cash by advances from the Sale Facility (to the extent not previously paid by the Debtors using DIP Facility financing and operating income under the DIP Budget, and the Purchase Price is reduced to the extent of such a payment and, to the extent any such payment is a Fee Payment Cap item, such payment also reduces the amount available under the Fee Payment Cap); and

(iii) with respect to the amount of the Assumed Liabilities described in Section 2.3, by assuming such Assumed Liabilities through a duly executed assignment and assumption agreement reasonably agreed to by Buyer and Sellers (the "Assignment and Assumption Agreement") or such other instrument(s) of conveyance and transfer, in form and substance reasonably acceptable to Sellers, as may be necessary to convey the Purchased Assets to Buyer (which, in the event of an Alternative Transaction, shall acknowledge that the Assumed Liabilities of any entity whose Shares are being acquired remain liabilities of such entity and are not being directly assumed by Buyer).

(e) Amounts necessary to fund estimated draws under the Sale Facility shall be funded by Buyer on the Closing Date.

ARTICLE IV **CLOSING**

4.1 **Closing Date.** Subject to the satisfaction of the conditions set forth in Article XI hereof (or the waiver thereof by the party entitled to waive that condition) and subject to Buyer's right to terminate this Agreement pursuant to Section 7.5; the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities, including through the Alternative Transaction provided for in Article II hereof, if applicable (collectively, the "Closing") shall take place at 10:00 a.m. (Phoenix time) on the Business Day selected by Buyer occurring as soon as practicable after satisfaction or waiver of the conditions set forth in Article XI; provided that (i) the Closing will not be delayed until the Regulatory Approval Date if all Regulatory Approvals have been obtained and all other conditions to Closing have been satisfied prior to that date, but shall occur as soon as all conditions to Closing are met, and (ii) the Closing Date shall be no later than the Regulatory Approval Date. Buyer may decide, in its sole and absolute discretion, to proceed with the Closing prior to a Plan Effective Date.

The Closing shall take place at the offices of Lewis and Roca, LLP (or at such other place as the parties may designate in writing). The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date."

4.2 **Closing Deliveries.**

- (a) **Sellers' Deliveries.** At the Closing, the Sellers shall deliver to Buyer:
- (i) If an Alternative Transaction is implemented, execution of any and all documents necessary to effectuate the acquisition of Shares and/or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, including without limitation an assignment of certificate of stock or other equity interest, articles of redomestication or conversion or merger or share exchange or any other documents required to be filed by any state having jurisdiction over the entities who are parties to an Alternative Transaction or formed or to be formed in connection with an Alternative Transaction;

- (i) bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of all of Sellers' right, title and interest in the Purchased Assets to Buyer, duly executed by the Sellers;
- (ii) all original books and records, including, without limitation, originals of any title documents related to the Purchased Assets and originals of any of the Purchased Assets, including contracts, real property leases, Intellectual Property and Permits and any and all passwords, user names, log ins and similar codes related to any of the Purchased Assets;
- (iii) a duly executed Assignment and Assumption Agreement;
- (iv) an assignment and assumption of each Real Property Lease (collectively, the "Lease Assignments"), duly executed by the applicable Seller that holds the leasehold interest in such Real Property Lease;
- (v) duly executed assignments of (i) the patents and trademarks that are included in Intellectual Property (if applicable), in forms suitable for recording in the United States Patent and Trademark Office, and (ii) duly executed assignments of the copyright registrations and applications for copyright registration owned by the Seller that are included in Intellectual Property (if applicable);
- (vi) duly executed assignments, in form and substance acceptable to Buyer, of any Contract relating to licensed Intellectual Property;
- (vii) the Executive Officer's certificate required to be delivered pursuant to and certifying to the matters set forth in Section 11.1(a) and Section 11.1(b), in form and substance satisfactory to Buyer;
- (viii) an executed management agreement, if applicable;
- (ix) a copy of all orders entered by the Bankruptcy Court pertaining to the transactions contemplated herein, including the Sale Order and, if applicable, the Confirmation Order;
- (x) all consents obtained, and all notices to third parties given, by the Sellers as of the Closing Date regarding the transfer of the Purchased Assets;
- (xi) final copies of the Schedules hereto;

- (xii) certified resolutions from the board of directors of each of the Sellers approving and authorizing this Agreement and the transactions contemplated herein;
 - (xiii) an affidavit of non-foreign status meeting the requirements of Section 1445(b)(2) of the Code; and
 - (xiv) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer.
- (b) Buyer's Deliveries. At the Closing, Buyer shall:
- (i) advance additional amounts as necessary from the Sale Facility to meet Closing obligations including Closing Cash Payments;
 - (ii) if an Alternative Transaction is implemented, execution of any and all documents necessary to effectuate the acquisition of Shares and/or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, including without limitation a subscription for purchase of stock or other equity interest, an acceptance of assignment of certificate of stock or other equity interest
 - (iii) execute and deliver to Sellers the Assignment and Assumption Agreement;
 - (iv) execute and deliver to Sellers the Lease Assignments; and
 - (v) deliver an officer's certificate, duly executed by a senior officer of the Buyer, certifying to the matters set forth in Section 11.2(a) and Section 11.2(b), in form and substance satisfactory to the Seller.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers (for purposes of this Agreement, including Articles V

and VII herein, the term “Sellers” expressly includes each Seller and each such Seller’s direct and indirect subsidiaries) represent and warrant to Buyer and agree as follows:

5.1 **Organization of Sellers.** Except as set forth on Schedule 5.1, each Seller is a corporation or limited liability company duly organized, validly existing and in good standing under the Laws of its respective state of formation as identified on Schedule 5.1, and subject to the authority of the Bankruptcy Court each Seller has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted, except for any failure to be in good standing or to have requisite power and authority that in the aggregate could not reasonably be expected to result in a Material Adverse Change. Schedule 5.1 identifies the only jurisdictions in which the ownership, use or leasing of each Sellers assets and properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for those jurisdictions in which the adverse effects of all such failures by such Seller to be qualified, licensed or admitted and in good standing could not in the aggregate reasonably be expected to result in a Material Adverse Change, and Schedule 11.1(h)(i) sets forth all jurisdictions in which qualification, licensing or other regulatory approvals are to be filed or obtained by Sellers.

5.2 **Authority of Sellers.** Each Seller has, upon entry of the Sale Order and Bankruptcy Court approval, all requisite power and authority to execute and deliver this Agreement and each Seller has, upon entry of the Sale Order and Bankruptcy Court approval, all requisite power and authority to execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by such Seller in connection with the consummation of the transactions contemplated by this Agreement (the “Sellers Documents”), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Sellers Documents and the consummation of the transactions contemplated hereby and thereby will be duly authorized by all requisite action on the part of each Seller prior to the Closing. This Agreement has been, and each of the Sellers Documents will be at or prior to the Closing, duly executed and delivered by each Seller which is a party thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order) this Agreement constitutes, and each of the Sellers Documents when so executed and delivered will constitute, legal, valid and binding obligations of each Seller, enforceable against the Sellers in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 **Conflicts; Consents of Third Parties.**

(a) Except as set forth on Schedule 5.3(a), none of the execution and delivery by the Sellers of this Agreement or the Sellers Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by the Sellers with any of the provisions hereof or thereof will conflict with, or result in any breach, violation of or default (with or without notice or lapse of time, or both) under, result in the creation of any Encumbrance, or give rise to a right of acceleration, termination or cancellation under any provision of: (i) the certificate of

incorporation and bylaws or comparable organizational documents of the Sellers; (ii) subject to entry of the Sale Order, any Contract or material Permit to which any Seller is a party or by which any of the properties or assets of Sellers are bound; or (iii) subject to entry of the Sale Order, any applicable Law.

(b) Except as set forth on Schedule 5.3(b) and subject to entry of the Sale Order, no material consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any other Person or Governmental Body (other than the Bankruptcy Court) is required on the part of any Seller in connection with the execution and delivery of this Agreement or the Sellers Documents, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or the taking by any Seller of any other action contemplated hereby. No other filings or regulatory approvals are necessary for the Operation of the Business, other than those listed on Schedule 11.1(h)(ii).

5.4 **Title to Assets; Sufficiency of Assets.** The Sellers are the owners of the Purchased Assets existing as of the date hereof, provided, however, that with respect to an Alternative Transaction, Sellers are not owners of the Shares, but are entitled under the Plan and Bankruptcy Court orders to effect a transfer of the Shares to Buyer, by direct purchase of the Shares, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state.. The Sellers have good, valid and marketable title to the Purchased Assets, except, in the event of an Alternative Transaction, with respect to the Shares, which the Sellers nonetheless are authorized to transfer. Subject to the entry of the Sale Order, and provided such order has not been stayed, modified, vacated or reversed, upon the Closing, Buyer shall acquire all of each Seller's right, title and interest in the Purchased Assets, free and clear of all Encumbrances, Claims and Interests. The Purchased Assets (including without limitation the computer software and Magenta assets), whether transferred directly or transferred indirectly through an Alternative Transaction, are sufficient to conduct the Business substantially as presently conducted.

5.5 **Real Property.**

(a) No Seller owns any real property.

(b) With respect to the Real Property Leases:

(i) The Sellers have made available to Buyer accurate and complete copies of (x) the Real Property Leases under which any Seller holds a leasehold interest in each leased real property, together with any amendments, modifications and assignments of such Real Property Leases, and (y) all overleases in the possession or control of Sellers with respect to the Real Property Leases referred to in clause (x) above; and

(ii) The Sellers own the Real Property Leases and the leasehold interests created thereby, free and clear of all Encumbrances except for Permitted Encumbrances.

(c) The Sellers believe in good faith, after due investigation and inquiry, that the Cure Amount and Cure Schedule for payment thereof set forth on Schedule 2.3(c) with respect to the Real Property Leases is true and correct in all material respects. No monetary defaults exist under any Real Property Leases other than the monetary defaults required to be cured pursuant to Section 365 of the Bankruptcy Code and listed on Schedule 2.3(c). To the Knowledge of Sellers, no non-monetary defaults exist under any Real Property Leases other than the non-monetary defaults listed on Schedule 5.5(c).

(d) Upon Buyer's acquisition of the Purchased Assets, Buyer will be able to operate the Real Property Leases in substantially the same manner as operated by the Sellers without violating any applicable zoning, use, subdivision or similar law.

(e) To the Knowledge of Sellers, no Seller has received written notice that any of the improvements located on the Real Property Leases are not presently used and operated in compliance with all material covenants, easements and restrictions affecting such Real Property Leases.

(f) Except as indicated on Schedule 5.5(f), the Real Property Leases comprise all of the real property used or occupied in the operation of the Business.

5.6 **Intellectual Property.**

(a) Except as set forth on Schedule 5.6(a), to the best of Sellers' Knowledge: (i) with respect to any Intellectual Property owned by Sellers (as opposed to Intellectual Property of which Sellers are a licensee), Sellers have all right, title and interest to all Intellectual Property, without any conflict with the rights of others, (ii) no Person other than the Sellers has the right to use the Intellectual Property owned by the Sellers, (iii) the Sellers have the valid right to use, pursuant to a license, sublicense or other agreement, any Intellectual Property used in the Business that is owned by a party other than the Sellers, and (iv) Sellers' use of Intellectual Property owned by others does not conflict with the rights of others.

(b) To the Knowledge of Sellers, set forth on Schedule 2.1(e) are all items of Intellectual Property used or useful in connection with or related to the Business. Except as set forth on Schedule 5.6(b), the Sellers have not granted any sublicense or similar right with respect to the Intellectual Property.

(c) With respect to each item that is required to be identified on Schedule 2.1(e) and except as otherwise set forth on Schedule 5.6(c), (i) at the Closing, to the Knowledge of Sellers, Buyer shall hold sole and exclusive rights to all such Intellectual Property, and no other Person shall have existing or contingent rights to use such Intellectual Property except with respect to software that is licensed from unaffiliated third persons or to the extent of licenses granted by Sellers, (ii) Sellers own or possess sufficient rights in or to such item to assign to Buyer all rights of Sellers in such Intellectual Property, and (iii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the Knowledge of Sellers, is threatened, as of the date hereof, that challenges the legality, validity, enforceability, registrations, use, or ownership of the item.

5.7 **Contracts.**

(a) Schedule 2.1(c)(i) and (ii) sets forth a list, as of the date hereof, of all material Contracts to which each Seller is a party or by which it is bound and that are used in or related to the Business or the Purchased Assets. To the extent written, the Sellers have delivered or made available to Buyer true, correct and complete copies of all of the Contracts listed or required to be listed on Schedule 2.1(c)(i) and (ii), including all schedules, exhibits, annexes, amendments, and modifications relating thereto.

(b) Except as set forth on Schedule 5.7(b), each material Contract is a valid and binding agreement of such Seller, and is in full force and effect, no Seller or, to the Knowledge of Sellers, any other party thereto is in default or breach, and to the Knowledge of Sellers, no event or condition has occurred which after notice or with the lapse of time or both would constitute a default or breach, in any respect under the terms of any material Contract. No Seller has received any written notice of the intention of any party to terminate any material Contract or that any party considers any Seller to be in material breach or material default thereunder or in potential breach in a material respect or default thereunder.

(c) The Sellers reasonably believe in good faith, after due investigation and inquiry, that the amounts set forth on Schedule 2.3(c) with respect to the Contracts represent an accurate and complete statement of the amounts due and owing and unpaid in respect of monetary defaults under the Contracts (exclusive of any pecuniary loss, including legal fees and interest, that may be asserted to be due and owing on account of such defaults). No monetary defaults exist under any Contracts other than the monetary defaults required to be cured pursuant to Section 365 of the Bankruptcy Code and listed on Schedule 2.3(c). To the Knowledge of Sellers, no non-monetary defaults exist under any Contract other than the non-monetary defaults listed on Schedule 5.7(c).

5.8 **Employee Benefits.**

(a) Set forth on Schedule 5.8(a) is a complete and correct list of all “employee benefit plans” as defined by Section 3(3) of ERISA (whether or not subject thereto) and all employment, consulting, retention, deferred compensation, bonus or other incentive compensation, severance or termination pay, stock purchase, stock option and other equity compensation, and all other employee benefit plans, programs or arrangements of any kind that are or were sponsored, maintained or contributed to, or required to be contributed to, by any Seller or an entity which is (or at any relevant time was) a member of a “controlled group of corporations” with or under “common control” with any Seller as defined in Section 414(b) or (c) of the Code (an “ERISA Affiliate”) and which provides or has provided benefits to any current or former Employee or independent contractor of any Seller (collectively the “Employee Plans”). The Sellers have made available to Buyer copies of the documents comprising each Employee Plan.

(b) Except as otherwise provided in Schedule 5.8(b):

(i) (A) each Employee Plan has been operated and administered in all material respects in accordance with its terms and applicable Law, including but not limited to ERISA and the Code, (B) each Employee Plan that is intended to be “qualified” within the meaning of Section 401(a) of the Code has received a favorable

determination letter from the Internal Revenue Service as to the qualified status of the Employee Plan and, to the Knowledge of Sellers, nothing has occurred that could reasonably be expected to cause the revocation of such letter, (C) none of the Employee Plans is subject to Title IV of ERISA or Section 302 of ERISA or is a “multiemployer plan” within the meaning of Section 3(37) of ERISA, and (D) neither the Seller nor any ERISA Affiliate has incurred or could reasonably be expected to incur any liability under Title IV or Section 302 of ERISA;

(ii) none of the Employee Plans provides coverage for medical or death benefits beyond termination of service or retirement, other than pursuant to COBRA, or any similar state or local Law;

(iii) neither the execution and delivery of this Agreement or any of the ancillary agreements by any Seller, nor the consummation of the transactions contemplated hereby or thereby (either alone or contingent upon the occurrence of any additional or subsequent events) will result in forgiveness of indebtedness or the acceleration or creation of any rights of any Transferred Employee to compensation or benefits under any Employee Plan (including the acceleration of the accrual or vesting of any benefits under any Employee Plan or the acceleration or creation of any rights under any severance, parachute or change in control agreement or the right to receive any transaction bonus or other similar payment); and

(iv) each Employee Plan which provides for the payment of nonqualified deferred compensation under Section 409A of the Code has been operated at all times in good faith compliance with all applicable requirements of Section 409A of the Code and the regulations promulgated thereunder.

5.9 **Litigation**. Except for the Bankruptcy Cases or as set forth on Schedule 5.9, there are no Legal Proceedings pending, or to the Knowledge of Sellers threatened, against or affecting the Business, any Purchased Assets or any Transferred Employee, other than those Legal Proceedings relating to routine claims and those relating to claims covered by insurance.

5.10 **No Finder**. Except as set forth on Schedule 5.10, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for any Seller in connection with the transactions contemplated by this Agreement and no Person acting on behalf of any Seller is entitled to any fee or commission or like payment from Buyer in respect thereof.

5.11 **Environmental Matters**. To the Knowledge of Sellers: (a) the Purchased Assets are in material compliance with all applicable Laws, regulations, or other legal requirements relating to the protection of the environment or human health and safety as it relates to Hazardous Materials (“Environmental Laws”), (b) no Seller has received written notice of any investigation, suit, claim, action, or proceeding relating to or arising under Environmental Laws with respect to the Purchased Assets or the Business, nor are any of the same being threatened in writing against any Seller or any Real Property Lease, (c) no Seller has received any written notice of, or entered into, any obligation, order, settlement, judgment, injunction, or decree involving outstanding requirements relating to or arising under Environmental Laws and (d) there has been no release of any Hazardous Materials into the environment at, onto, or from any property leased by any Seller

that would reasonably be expected to result in material liability, costs or claims relating to any Environmental Law. To the Knowledge of Sellers, Sellers have obtained and maintain all Permits, licenses and other authorizations required under all applicable Environmental Laws to operate the Business as it is currently being operated at the real property leased by Sellers, and all such Permits, licenses and authorizations are in full force and effect.

5.12 **SEC Filings; Financial Statements.** Except as set forth on Schedule 5.12, the Company has filed or furnished all registration statements, reports, schedules and other documents required to be filed or furnished by it or any of the Sellers with the SEC since December 31, 2007 (collectively, including any amendments thereto, the “Company SEC Reports”). As of their respective filing dates (or, if amended, as of the date of such amendment), the Company SEC Reports were prepared in accordance with, and complied in all material respects with, the requirements of the Exchange Act and the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, and none of the Company SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a Company SEC Report filed subsequently (but prior to the date hereof). The Company has made available to Buyer complete and correct copies of all amendments and modifications effected prior to the date of this Agreement that have not yet been filed by the Company with the SEC but which are required to be filed. Each of the financial statements (including the related notes and schedules) of the Company included in, or incorporated by reference into, the Company SEC Reports (the “Financial Statements”) complies in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP (except, in the case of unaudited financial statements, as permitted by applicable rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and their consolidated results of operations for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes). The Sellers have no current intention to correct or restate, and to the Knowledge of the Sellers, there is not any basis to correct or restate any of the Financial Statements other than as set forth on Schedule 5.12. The Sellers have not had any disagreement with any of their auditors regarding material accounting matters or policies during any of its past three (3) full fiscal years or during the current fiscal year-to-date other than as set forth on Schedule 5.12.

5.13 **Undisclosed Liabilities.** Except (i) as disclosed in the Financial Statements and Bankruptcy Schedules or, (ii) for Liabilities incurred in the Ordinary Course of Business since June 30, 2010 and (iii) as disclosed on Schedule 5.13, to the Knowledge of Sellers, the Business does not have any liability of any nature, whether or not absolute, accrued, contingent or otherwise, that would be required to be disclosed on or in the Financial Statements pursuant to GAAP. All Liabilities of Magenta as of October 31, 2010 are also disclosed on Schedule 5.13.

5.14 **Compliance with Laws; Permits.** Each Seller (i) has complied with, is in compliance with and has operated the Business in compliance with all applicable Laws in all material respects, and (ii) holds all material Permits, concessions, grants, licenses, easements,

variances, exemptions, consents, orders, franchises, authorizations and approvals of all Governmental Bodies necessary for the lawful conduct of the Business, except for any non-compliance or non-possession that individually or in the aggregate could not reasonably be expected to result in a Material Adverse Change. No Seller has received any written notice or other written communication from any Governmental Body or other Person, other than as set forth on Schedule 5.17 with respect to Taxes, (i) asserting any violation of, or failure to comply with, any requirement of any Permit or (ii) notifying Seller of the non-renewal, revocation or withdrawal of any Permit. Seller is in material compliance with the terms of the Permits.

5.15 **Absence of Certain Changes**. Since the Petition Date:

- (a) there has not been any Material Adverse Change;
- (b) except as set forth on Schedule 5.15(b) or with respect to expenditures approved as part of the DIP Budget or otherwise by the Bankruptcy Court order, no Seller has paid, discharged or satisfied any material claim, liability or obligation (whether absolute, accrued, contingent or otherwise) outside the Ordinary Course of Business;
- (c) there has not been any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the Business or any Purchased Assets which has resulted in a Material Adverse Change;
- (d) except as set forth on Schedule 5.15(d), or with respect to the DIP Facility senior lien, no Seller has permitted or allowed any of the Purchased Assets (real, personal or mixed, tangible or intangible) to be subject to any Encumbrances which shall not be released as of the Closing Date, provided that Buyer may assume \$9,000,000 of Pre-Petition Facilities under Section 3.1(b)(1)(C);
- (e) no Seller has sold, transferred, or otherwise disposed of any material properties or assets (real, personal or mixed, tangible or intangible) outside the Ordinary Course of Business;
- (f) no Seller has waived or otherwise released any material causes of actions, lawsuits, judgments, claims and demands except in the Ordinary Course of Business;
- (g) no Seller has disposed of, abandoned or permitted to lapse any material rights to the use or registration of any Intellectual Property, or entered into any exclusive license with respect to any of the Intellectual Property, or disposed of or disclosed to any Person, other than representatives of Sellers, Buyer and the other participants, and their respective representatives, in the Auction to acquire the Business and the Purchased Assets pursuant to non-disclosure agreements, any trade secret, formula, process, know-how not theretofore a matter of public knowledge;
- (h) except as set forth on Schedule 5.15(h), there has not been any transaction or commitment made, or any contract or agreement entered into, by any Seller material to the Business, other than transactions and commitments in the Ordinary Course of Business consistent with past practices and those contemplated herein and other than approved by the Bankruptcy Court;

(i) except as set forth on Schedule 5.15(i), there has not been any (A) employment, retention, bonus, deferred compensation, severance, retirement or other similar agreement entered into with any Employee, consultant or director (or any amendment to any such existing agreement), (B) grant of any severance or termination pay to any Employee, consultant or director or (C) change in compensation or other benefits payable to any Employee, consultant or director pursuant to any severance or retirement plans or policies thereof, in each case other than in the Ordinary Course of Business; and

(j) no Seller has agreed, whether in writing or otherwise, to take any action described in this Section 5.15.

5.16 **Accounts Receivable**. All Accounts Receivable of the Business are reflected properly on the books relating to the Business, are to the Knowledge of Sellers, valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to (a) the reserve for bad debts set forth on the face of the Financial Statements as adjusted for operations and transactions through the Closing Date in accordance with the Ordinary Course of Business and (b) the asserted offsets set forth on Schedule 5.16.

5.17 **Tax Matters**. Except as set forth on Schedule 5.17:

(a) The Sellers have timely filed with the appropriate Tax Authorities all Tax Returns required to be filed with respect to the Purchased Assets and the income and operations of the Business. All such Tax Returns are true, complete, and correct in all material respects.

(b) The Sellers have duly paid in full all Taxes and as of the Closing Date, there will be no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the Purchased Assets.

(c) There is no audit or other matter in controversy with respect to any Taxes due and owing by any of the Sellers insofar as any such matter pertains to the Purchased Assets or the income and operations of the Business, and there is no Tax deficiency or claim assessed or, to the Knowledge of Sellers, proposed or threatened (whether orally or in writing) against any of the Sellers, insofar as any such deficiency or claim pertains to the Purchased Assets or the income and operations of the Business.

(d) The Sellers have withheld all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, stockholder, or other third party, and such withheld Taxes have either been duly paid to the proper Taxing Authority or set aside in accounts for such purpose.

(e) The Sellers have not waived any statutory period of limitations for the assessment of any Taxes relating to the Purchased Assets or the income and operations of the Business, or agreed to any extension of time with respect to an assessment or deficiency for such Taxes, other than in the case of any such waivers or extensions in respect of an assessment or deficiency of Tax the liability of which has been satisfied or settled.

(f) The Sellers are not foreign persons within the meaning of Section 1445 of the Code.

(g) Sellers shall separately provide to Buyer a list of all Priority Tax and Priority Non-Tax Claims unpaid as of the execution date of this Agreement.

5.18 **Labor Matters.**

(a) None of the Sellers is a party or subject to any labor agreement with respect to its Employees with any labor organization, union, group or association and the Sellers do not have any employee unions (nor any other similar labor or employee organizations) under local statutes, custom or practice. In the past two years, none of the Sellers has experienced any attempt by organized labor or its representatives to make any Seller conform to demands of organized labor relating to any Employees or to enter into a binding agreement with organized labor that would cover any Employee. There is no labor strike or labor disturbance pending or, to the Knowledge of Sellers, threatened against any Seller nor is any material grievance currently being asserted, and in the past two years no Seller has experienced a work stoppage or other labor difficulty, and is not and has not engaged in any unfair labor practice or been subject to any unfair labor practice complaint or related or successor employer application and no such complaints or applications are, to the Knowledge of Sellers, threatened.

(b) Except as set forth in Schedule 5.18, during the last year there has been no “mass layoff” or “plant closing” as defined by WARN in respect of any Seller, and none of the Sellers has been affected by any transactions or engaged in layoffs or employment terminations sufficient in number to trigger application of any state, local or foreign Law or regulation which is similar to WARN.

5.19 **Employment Matters.**

(a) Sellers shall separately provide to Buyer a list of all individuals, whether or not actively at work as of the date hereof, who are employed by any of the Sellers in connection with the Business and: (i) their department; (ii) their dates of hire; (iii) their annual salary equivalent; and Sellers represent and warrant that there are no non-standard bonus, commission or incentive plans or agreements for or with them; or outstanding loans or advances made by or to them; or verbal or written employment agreements which impacts or establishes the terms of employment of those persons, and that such list is accurate and complete as of the date indicated thereon (which date is the most recent date for which the information contained thereon is readily available to the Sellers as of the execution date of this Agreement). Correct and complete copies of all employment agreements have been delivered to Buyer.

(b) Schedule 5.19(b) contains a list of all independent contractors currently engaged by any Seller and: (i) their address; (ii) their payment arrangements; and (iii) a brief description of their jobs or projects currently in progress. Schedule 5.19(b) is accurate and complete as of the date indicated thereon (which date is the most recent date for which the information contained thereon is readily available to the Sellers). Correct and complete copies of all written agreements with such contractors have been delivered to Buyer.

(c) Except for any limitations of general application which may be imposed under applicable employment Laws or otherwise set forth on Schedule 5.19(c), and except for any employment agreements otherwise disclosed to Buyer, each of the Sellers has the right to terminate the employment of its Employees at will and to terminate the engagement of any of its independent contractors without payment to such Employee or independent contractor other than for services rendered through termination and without incurring any penalty or liability.

(d) To the Knowledge of Sellers, the Sellers are in compliance, in all material respects, with all Laws relating to employment practices. The Sellers have delivered to Buyer accurate and complete copies of all current employee manuals and handbooks, disclosure materials, policy statements and other materials prepared, disclosed or promulgated by any Seller at any time during the last three years relating to the employment of the current and former Employees of any Seller.

5.20 **Customers and Suppliers.** Schedule 5.20 sets forth a complete and correct list of the twenty largest customers and the twenty largest suppliers (each measured by dollar volume of sales and purchases as the case may be) of the Business as of and for each of the last two (2) calendar years, and the amount of such business done (by dollar volume of sales and purchases as the case may be) with each such customer or supplier as of and for each such year. No Seller has received any notice from any such customer or supplier that such customer or supplier has ceased, or will cease, to purchase or sell, as applicable, products or services to or from any Seller or will or intends to substantially reduce such purchases or sales, as applicable.

5.21 **No Outstanding Transactions.** Other than this Agreement, the Sellers are not bound by any agreement with respect to a possible sale, transfer or disposition of any of the Purchased Assets or the Shares.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Sellers and agrees as follows:

6.1 **Organization of Buyer.** Buyer is a newly formed corporation, duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted, except for any failure to be in good standing or to have requisite power and authority that in the aggregate could not reasonably be expected to result in a Material Adverse Change.

6.2 **Authority of Buyer.** Buyer has full power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated by this Agreement (the "Buyer Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Buyer Documents and the

consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on behalf of Buyer. This Agreement has been, and each Buyer Document will be at or prior to the Closing, duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Buyer Document when so executed and delivered will constitute, the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including, without limitation, principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 **Conflicts; Consents of Third Parties.**

(a) None of the execution and delivery by the Buyer of this Agreement or the Buyer Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Buyer with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Buyer, (ii) any contract or permit to which Buyer is a party or by which Buyer or its properties or assets are bound or (iii) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any other Person or Governmental Body is required on the part of Buyer in connection with the execution and delivery of this Agreement or the Buyer Documents, the compliance by Buyer with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby without any material delay, the performance by Buyer of their respective obligations hereunder, or the taking by Buyer of any other action contemplated hereby, or for Buyer to conduct the Business.

6.4 **No Finder.** Other than as listed on Schedule 5.10, no other Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from Buyer in respect thereof.

6.5 **No Representation.** Notwithstanding anything to the contrary herein, Buyer makes no representation or warranty as to the fair market value of the Purchased Assets being acquired hereunder.

6.6 **Solvency.** Buyer is solvent and will not be left insolvent or with an unreasonably small capital as a result of this transaction.

6.7 **Buyer's Investigation.** As of the Closing Date, Buyer will have conducted its due diligence investigation of Sellers, provided, however, that such investigation does not limit in any way the representations and warranties of the Sellers under this Agreement.

6.8 **Sufficiency of Funds.** Buyer has unencumbered cash on hand or credit or capital contribution arrangements with financially responsible third parties, or a combination thereof, in

an aggregate amount sufficient to enable it to pay the Purchase Price and all other amounts payable by it in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 **Bankruptcy Court Approvals.** Sellers have filed and served the Sale Motion pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, as applicable, and shall use all reasonable efforts and act in good faith to seek entry of an order in form and substance satisfactory to Buyer (the “Sale Order”), which among other things, authorizes the Sellers pursuant to (without limitation) Sections 363(b), 363(f), 363(k), 363(l) and 365(b) of the Bankruptcy Code to enter into and perform this Agreement and contains findings of fact and conclusions of law including (without limitation) those to the following effect: (i) that the Bankruptcy Court has core jurisdiction to enter the Sale Order; (ii) that due and proper notice of the motion for entry of the Sale Order was given to all parties entitled thereto; (iii) that the transactions contemplated by this Agreement are supported by the Sellers’ sound business judgment; (iv) that the transactions contemplated by this Agreement are in the best interests of the Sellers and their bankruptcy estates; (v) that the consideration to be received by Sellers under this Agreement is fair and reasonable; (vi) that predicates exist under one or more applicable subsections of Section 363(f) of the Bankruptcy Code to authorize a sale to Buyer of the Purchased Assets free and clear of interests of all parties in the Purchased Assets; (vii) that the Contracts and the Real Property Leases are executory contracts and unexpired leases; (viii) that the Purchased Assets are sold free and clear of all Encumbrances; (ix) that no third party consents are needed for closing other than consents from Governmental Bodies; (x) that Sellers are relieved of any future performance obligation under assigned Contracts and Real Property Leases pursuant to Section 365(k) of the Bankruptcy Code; (xi) that the Buyer is a good-faith purchaser entitled to the protections of Section 363(m); (xii) authorizing the assumption and assignment of the Contracts and Real Property Leases; (xiii) liquidating each default to be cured as a prerequisite to assumption or setting such default for hearing; (xiv) (A) directing that each liquidated default be cured within ten days after Closing by payment or provision for payment of a liquidated sum, tender of which shall constitute a complete satisfaction of all claims arising from defaults (both monetary and non-monetary), or (B) provision for segregating such sum to cure those defaults, following their liquidation as the Court may deem necessary to constitute adequate assurance of prompt cure of defaults, or (C) authorizing the curing of those defaults in such time and in such manner as may be agreed by the Buyer and the counterparty to such contract or lease; (xv) authorizing the parties to close; (xvi) over-ruling all objections to entry of the Sale Order; (xvii) reserving jurisdiction to construe and enforce the Sale Order; (xviii) providing that Buyer is not a successor in interest to Sellers or the business of Sellers with respect to all parties having notice of the sale; (xix) providing that Buyer shall not be liable for any pre- or post-petition debts of the Sellers other than with respect to payment of the Purchase Price as allocated among the Assumed Liabilities, Administrative Expense Claims including Fee Claims, Priority Claims and Wind Down Obligations as set forth in this Agreement; (xx) containing such other findings and provisions as may be reasonably requested by Buyer; (xxi) that any and all additional amounts advanced under the DIP Facility and Sale Facility shall be approved by the Court; (xxii) that all obligations of the Sellers under and with respect to the DIP Facility and Sale Facility will be

secured by, pursuant to sections 364(c)(2) and section 364(d)(1) of the Bankruptcy Code, a first priority lien senior to all prepetition and post petition liens and security interests of all prepetition and post petition lenders, and will also receive and be entitled, pursuant to Section 364(c)(1) of the Bankruptcy Code, to a super-priority administrative expense claim over all other costs and expenses of the kinds specified in, or ordered pursuant to, sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726 or any other provisions of the Bankruptcy Code; (xxiii) that all advances made pursuant to the DIP Facility and Sale Facility shall be deemed to be included in the Pivotal GC Indemnification and Reimbursement Claim (as defined in the DIP Order); (xxiv) that all obligations of the Sellers to any prepetition secured or unsecured lenders have been released or shall be released through the Confirmation Order as of the date thereof; (xxv) that the transfer of any assets from Magenta in consideration for release and extinguishment of intercompany notes is for fair value, if applicable; (xxvi) that Magenta has not received any prepetition or post-petition advances from any prepetition or post petition lender; (xvii) to the extent possible after exerting the best efforts of each of the parties, that the provisions of Bankruptcy Rules 6004(g) and 6006(d) shall not apply to the Sale Order; (xxviii) that the Buyer has not acted in a collusive manner with any Person and the Purchase Price was not controlled by any agreement among bidders; (xxix) that nothing contained in the Plan or any plan of reorganization or liquidation will alter, conflict with, or derogate from, the provisions of this Agreement, provided however, that if the Buyer elects to consummate this transaction under the Plan, the terms of the Plan shall be conformed to the extent that any provision of this Agreement is inconsistent therewith; and (xxx) in the event of an Alternative Transaction, (i) the transfer of the Shares to the Buyer pursuant to, and subject to the terms of, the Alternative Transaction shall constitute a legal, valid and effective transfer of the Shares, and shall, upon the consummation of the Closing, vest in the Buyer good and marketable title in and to the Shares, free and clear of all Interests, Claims, liens and Encumbrances of any kind or nature whatsoever, (ii) all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and other regulatory authorities, lenders, trade and other creditors holding any claims to the Shares, are forever barred and estopped from asserting against the Buyer, its successors or assigns (to the extent allowed by law), its property, its officers, directors and shareholders or the Shares, such persons' or entities' Claims and Interests, and (iii) all such Claims and Interests shall be unconditionally released and terminated as to the Shares.

7.2 **Cooperation.** Sellers and Buyer shall consult with one another regarding pleadings which either of them intends to file, or positions either of them intends to take before the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Sale Order, the Confirmation Order, the Sale Facility or this Agreement. Sellers shall promptly and reasonably provide Buyer and its counsel with all notices and communications received by Sellers relative to any of the transactions contemplated by this Agreement, provided that Sellers shall be entitled to maintain in confidence all communications to and from prospective buyers other than Buyer, except as required to make such communications public by the Bankruptcy Court.

7.3 **Seller Actions.** The Sellers shall use their commercially reasonable efforts to have the Bankruptcy Court schedule a hearing on the Sale Motion and Plan Confirmation as soon as possible so as to obtain entry by the Bankruptcy Court of the Sale Order and Confirmation Order by no later than February 1, 2011 (the "**Sale Hearing**"). The Sellers shall also use their commercially reasonable efforts to obtain any other approvals or consents from the Bankruptcy

Court that may be reasonably necessary to consummate the transactions contemplated in this Agreement. Furthermore, the Sellers shall serve on all counterparties to the Contracts and Real Property Leases that are to be transferred pursuant to Section 2.1(b) and 2.1(c)(i) to the extent not previously notified, a notice specifically stating that the Sellers are or may be seeking the assumption and assignment of such Contracts and Real Property Leases (“Assignment Notice”) and shall notify such parties of the deadline for objecting to the assumption and assignment and Cure Amount, which deadline shall not be less than two (2) days prior to the Sale Hearing unless otherwise provided in the Bidding Procedures Order. In cases in which the Sellers are unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00. The Sale Motion and Assignment Notice shall reflect Buyer’s agreement to perform from and after the Closing under the Contracts and Real Property Leases, which, subject to Bankruptcy Court approval shall be the only adequate assurance of future performance necessary to satisfy the requirements of section 365 of the Bankruptcy Code in respect of the assignment to Buyer of such Contracts and Real Property Leases.

7.4 **Further Actions.** Buyer agrees that it will promptly take such actions as are reasonably requested by the Sellers to assist in obtaining the Sale Order and implementing the Bidding Procedures Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code and can provide assurance of future performance under the Contracts and Real Property Leases. Buyer and Sellers agree to cooperate to make all necessary regulatory filings by the Regulatory Filing Date and take any other necessary or desirable actions to facilitate the performance of their obligations hereunder.

7.5 **Plan of Reorganization.** The parties acknowledge that the sale contemplated by this Agreement is a component of Sellers’ Plan of Reorganization (the “Plan”) filed with the Bankruptcy Court herewith. The Plan shall be modified to conform the Plan to the terms and conditions of this Agreement. The parties further agree that confirmation of the Plan and the Effective Date of the Plan are not preconditions to the approval or Closing of the Sale to Buyer under the terms and conditions set forth herein.

ARTICLE VIII **COVENANTS**

The respective parties hereto covenant and agree to take the following actions between the date hereof and the Closing Date.

8.1 **Access to the Business.** Sellers shall afford to the officers, employees and authorized representatives of Buyer (including, without limitation, independent public accountants and attorneys) reasonable access during normal business hours to the offices, properties, Employees and business and financial records of the Sellers to the extent Buyer shall reasonably deem necessary or desirable and shall furnish to Buyer or its authorized representatives such additional information concerning the Purchased Assets, the Business and the operations of Sellers as shall be reasonably requested, including all such information as shall

be necessary to enable Buyer or its representatives to verify the accuracy of the representations and warranties contained in this Agreement, to verify that the covenants of Sellers contained in this Agreement have been complied with, and to determine whether the conditions set forth in Article XI have been satisfied. Buyer agrees that such investigation shall be conducted in such a manner as not to interfere unreasonably with the operations of Sellers. No investigation made by Buyer or its representatives hereunder shall affect the representations and warranties of Sellers hereunder. Buyer expressly acknowledges that any information it receives pursuant to this Section 8.1 is subject to the confidentiality provisions set forth in Section 13.2.

8.2 **Preserve Accuracy of Representations and Warranties.** Each of the parties hereto shall refrain from taking any action that would render any representation or warranty contained in Article V or VI of this Agreement inaccurate as of the Closing Date.

8.3 **Operations Prior to the Closing Date.** Between the Sale Hearing and the Closing, Sellers will cause the Business to be operated in the Ordinary Course of Business and pursuant to the terms of the DIP Facility Budget, and shall not take any action inconsistent with the transactions contemplated hereby and will not permit any material transaction outside the Ordinary Course of Business in respect of the Business without the express written approval of Buyer (which shall not be unreasonably withheld) or unless so ordered by the Bankruptcy Court after notice to Buyer. Sellers shall take no action to the detriment of Buyer or the operation of the Business by Buyer, following the Sale Hearing. Sellers acknowledge and agree that prior to the Closing Date Sellers are operating the Business on behalf of, and in trust for, the Buyer, and shall take no action in contravention thereof. Without limiting the generality of the foregoing, Sellers shall not, without the express written approval of Buyer, which shall not be unreasonably withheld, or authorization by order of the Bankruptcy Court:

(a) except as set forth on Schedule 5.6(c), fail to maintain or renew all copyright, trademark and patent applications or fail to maintain any registered copyrights, trademarks or patents;

(b) fail to maintain in good working order any Equipment, unless it has a de minimis impact upon the Business;

(c) fail to maintain all insurance covering loss or destruction of the Purchased Assets or conduct of the Business currently in effect;

(d) fail to maintain all material relationships with lessors, licensors, suppliers, customers, and employees of the Business;

(e) fail to preserve the strict confidence of all trade secrets related to the Business, subject to the Sellers' ability to disclose information to other prospective bidders and their advisers in accordance with the terms of the standard non-disclosure agreement furnished to prospective bidders;

(f) enter into any contract, agreement, undertaking or commitment affecting the Business outside of the Ordinary Course of Business or enter into any agreement, undertaking or commitment that will have the effect of competing with Buyer's operation of the Business;

(g) sell, lease (as lessor), transfer or otherwise dispose of (including any transfers from a Seller to any of its Affiliates), or mortgage or pledge, or impose or suffer to be imposed any Encumbrance on, any of the Purchased Assets or Shares, other than consenting to the assignment of the DIP Facility from the DIP Lenders to Buyer pursuant to the terms hereof;

(h) unless to Sellers' benefit or in the Ordinary Course of Business, amend, modify, extend, renew or terminate any Contract or Real Property Lease that is to be assumed by Buyer, or terminate, waive or amend any right under any of the Contracts or Real Property Leases that are to be assumed by Buyer;

(i) enter into any business or arrangement or otherwise take any action that would reasonably be expected to have a material adverse impact on the ability of the Buyer to obtain any material consents of Governmental Bodies necessary in connection with the Business;

(j) intentionally fail to notify Buyer in writing of the commencement of any material litigation against any Seller or the Business;

(k) hire any new individuals or increase salaries or wages, declare bonuses, increase compensation or benefits or institute any new employment arrangement, benefit plan or program with respect to any Employee, except as required by law, as required by the terms of previously existing Employee Plans or in the Ordinary Course of Business;

(l) intentionally fail to notify Buyer in writing of the proposed entry into any Contract or Real Estate Lease and the intention to reject any Contract or Real Estate Lease; or

(m) enter into any commitment for capital expenditures except pursuant to the DIP Facility Budget; or

(n) fail to comply with all requirements of Law applicable to the Purchased Assets, and promptly after receipt thereof, give Sellers copies of any notice received from any Governmental Body or other Person alleging any violation of or liability under any such Requirements of Law.

To the extent that there is any ambiguity as to whether a contract, agreement, undertaking or commitment affects the Business or the Purchased Assets or is outside of the Ordinary Course of Business, Sellers shall consult with Buyer in good faith prior to entering into such contract, agreement, undertaking or commitment. For purposes of clarity, nothing in this Section 8.3 shall be construed to in any way limit Sellers' ability to auction the Purchased Assets to the highest bidder at the Auction.

8.4 **Notification by Sellers of Certain Matters.** During the period prior to the Closing Date, Sellers will promptly advise Buyer in writing of (a) any notice, objection or other communication from any third Person alleging that the consent of such third Person is or may be required in connection with the transactions contemplated by this Agreement, (b) any material default under any Contract or Real Property Lease or event which, with notice or lapse of time or both, would become such a default on or prior to the Closing Date and of which Sellers have Knowledge, and (c) any Material Adverse Change.

8.5 **Regulatory Approvals.** Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to apply to all applicable Governmental Bodies for any approval required for the consummation of the transactions contemplated by this Agreement, shall prosecute such applications in good faith and with due diligence before the Governmental Bodies, and in connection therewith shall take such action or actions as may be necessary or reasonably required in connection with the applications, including furnishing to the Governmental Bodies any documents, materials, or other information requested by them in order to obtain the required approvals as expeditiously as practicable. In addition, to the extent practicable, the parties hereto shall use their best efforts to (a) promptly notify each other of any communication to that party from any Governmental Body with respect to the applications described in this paragraph, (b) permit a representative of the other party reasonably acceptable to the first party to attend and participate in meetings (telephonic or otherwise) with any Governmental Body, and (c) permit the other party to review in advance, as reasonable, any proposed written communication to a Governmental Body. No party hereto shall knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause any Governmental Body not to grant approval of any application or materially to delay such approval, to the material detriment of the other party. However, Buyer shall be solely responsible for obtaining authorization to offer telecommunications services in any jurisdiction in which it does not currently hold such authorization. Sellers shall provide Buyer with such assistance in obtaining such authorizations as Buyer shall reasonably request, and DIP Facility funds shall be made available for all Regulatory Approval actions of Buyer and Sellers. Buyer shall also file all reports, and cause to be delivered all notices to Sellers' telecommunications service customers required by 47 C.F.R. Section 64.1120(e) and comparable State regulations.

8.6 **Publicity.** Neither the Sellers nor Buyer shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Buyer or the Sellers, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Buyer or the Sellers list securities, provided that the party intending to make such release shall use its reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.7 **Sellers' Name Change.** The Sellers shall, following the Closing, upon any request of Buyer, execute and deliver to Buyer appropriate documents to change the names of each Seller (except a Seller whose Shares have been acquired by Buyer) to a name substantially dissimilar to "Global Capacity", "20/20 Technologies", "Capital Growth", "CentrePath", "CenterPath", "Nexvu Technologies" and "FNS 2007." The Sellers shall thereafter file any necessary documents to reflect the foregoing name changes with the appropriate Governmental Body for each jurisdiction in which each Seller is organized and/or qualified to do business. Notwithstanding the foregoing, nothing herein shall be deemed to limit or restrict the ability of Buyer to utilize such names in connection with its operation of the Business or otherwise.

8.8 **Additional Matters.** Subject to the terms and conditions of this Agreement, each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be

taken, all action and to do, or cause to be done, all things necessary, proper, or advisable under applicable Laws and regulation to consummate and make effective the transactions contemplated by this Agreement, including using all commercially reasonable efforts to obtain all necessary waivers, consents, and approvals required under this Agreement. Prior to the Closing, Sellers shall take any and all necessary actions to transfer, assign, record or perfect in its name record title to any of its Purchased Assets that is not presently held or recorded in its name, including, without limitation, filing any necessary notices of assignment in the United States Patent and Trademark Office or United States Copyright Office, as applicable, with respect to the Intellectual Property.

8.9 **Post-Closing Operation of Non-Transferred Assets.** Subsequent to Closing, to the extent any Non-Transferred Assets exist, Buyer or Seller, in the sole determination of Buyer, shall operate the Non-Transferred Assets pursuant to a management agreement agreed to between Sellers and Buyer until the Non-Transferred Assets are transferred to Buyer.

ARTICLE IX

AGREEMENTS REGARDING EMPLOYEES

9.1 **Employees.** Buyer shall have the right, but not the obligation, to employ or engage as contractors any or all of the Employees as Buyer determines in its sole and absolute discretion. The terms of employment offered to any Employees shall be determined by Buyer in its sole and absolute discretion. Any Employees actually employed by Buyer are referred to herein as “Transferred Employees.” Buyer shall deliver a list of the Employees it intends to hire prior to the Sale Order Date. Sellers shall deliver to Buyer on or before the Closing Date all personnel files and employment records relating to the Transferred Employees (including completed I-9 forms and attachments with respect to all Transferred Employees, except for such employees as Seller certifies in writing are exempt from such requirement). Buyer may, at its option in its sole discretion offer a management incentive plan to any of the Transferred Employees on rates commensurate with the industry in consideration for nonsolicitation of the Sellers’ existing customers for a period of one year following the Closing Date in the event they are terminated within such time period. Nothing herein shall limit Sellers’ covenants set forth herein not to compete with Buyer prior to or following the Sale Hearing. In the event of an Alternative Transaction, Buyer may require, as a condition of Closing, that Company terminate or cause to be terminated any Employees designated by Buyer, in its sole and absolute discretion.

9.2 **Employee Plans.** Unless the Buyer, in its sole discretion, elects on or after the Closing, to adopt any of Sellers’ Employee Plans, the Sellers shall retain (or, in the event of an Alternative Transaction, Sellers shall otherwise cause to be terminated, assumed by one or more third parties, or otherwise disposed of) (i) all liabilities and obligations in respect of its past, present and future employees under applicable Laws and (ii) all liabilities and obligations under any “employee benefit plan” within the meaning of Section 3(3) of ERISA and any other employee benefit plan or program maintained or contributed to by Sellers or any ERISA Affiliate, including any Employee Plans, and Buyer shall have no liability or obligation whatsoever under the Employee Plans nor shall Buyer assume the sponsorship of the Employee Plans. Buyer may, at its option, in its sole discretion, offer such benefit plans or employee plans to any Transferred Employees on such terms and conditions as are commensurate with other companies of the size of

Sellers in the industry, provided that nothing herein shall require Buyer to offer any employee or other benefit plans to Transferred Employees.

9.3 **Other Obligations.** Except as otherwise required by Law, specified in this Agreement, set forth on Schedule 9.3, or otherwise agreed in writing by Buyer and/or its Affiliates (including by inclusion in the Wind Down Budget), neither Buyer nor its Affiliates shall be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee of the Sellers on account of any termination of such Employee's employment on or before the Closing Date, and such benefits (if any) shall remain obligations of the Sellers.

9.4 **Forms W-2 and W-4.** The Sellers and Buyer shall adopt the "standard procedure" for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and Forms W-4 (Employee's Withholding Allowance Certificate) regarding the Transferred Employees. Under this procedure, Sellers shall keep on file all IRS Forms W-4 provided by the Transferred Employees for the period required by applicable law concerning record retention and Buyer shall obtain new IRS Forms W-4 with respect to each Transferred Employee.

9.5 **Employee Communications.** Prior to making any written or oral communications to the Employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, Sellers shall provide Buyer with a copy of the intended communication.

ARTICLE X **TAXES**

10.1 **Transfer Taxes.** No Seller owns any real property. Buyer shall have no liability hereunder for any Transfer Taxes. The Sellers shall seek to include in the Sale Order with respect to this Agreement a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes under Section 1146(a) of the Bankruptcy Code. The Sellers and Buyer shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds of Transfer Taxes.

10.2 **Purchase Price Allocation.** The allocation of the Purchase Price (plus any Assumed Liabilities, to the extent permitted by the Code) among the Purchased Assets shall be determined pursuant to Schedule 10.2 prepared by Buyer as soon as practicable on or after the Closing Date (or, in the event of an Alternative Transaction, in accordance with such other method as is customary and in accordance with generally accepted accounting principles in connection with an acquisition of equity interests). Buyer and the Sellers hereby covenant and agree that the values assigned to the Purchased Assets in Schedule 10.2 shall be conclusive and final for all purposes of this Agreement, to the extent permitted by the Code. Buyer and the Sellers further covenant and agree not to take a position on any Tax Return or in any judicial or administrative proceeding that is inconsistent with the allocations specified in Schedule 10.2, provided that nothing contained herein shall prevent the Sellers and Buyer from settling any proposed deficiency or adjustment by any Taxing Authority based upon or arising out of the Purchase Price allocation, and neither the Sellers nor Buyer shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such

allocation. Buyer and the Sellers each shall file with their respective U.S. federal income Tax Returns (if otherwise required to be filed) for the tax year in which the Closing occurs an IRS Form 8594 (or other applicable form) in accordance with Schedule 10.2. Buyer and the Sellers each shall deliver to the other a copy of the IRS Form 8594 (or other applicable form), as so filed with its respective U.S. federal income Tax Return, if any, within thirty (30) days of the filing of such return.

10.3 **Tax Returns.** Sellers shall prepare or cause to be prepared all Tax Returns relating to the Purchased Assets for the periods ending on or prior to the Closing Date. Buyer shall prepare and file all Tax Returns relating to all real property taxes, personal property taxes, or similar ad valorem obligations levied with respect to the Purchased Assets (excluding any Transfer Taxes) for any taxable period beginning on or before and ending after the Closing Date (a “Straddle Period,” and such taxes, “Straddle Period Taxes”), whether imposed or assessed before or after the Closing Date, other than Straddle Period Tax Returns that Sellers are required to file by applicable law. The Liability for payment of each such Straddle Period Tax shall be prorated between Buyer and Sellers at the Closing Date based on 100% of the amount of such Straddle Period Tax imposed for the prior taxable period. The portion of each such Straddle Period Tax that is allocable to the Sellers shall be the product of (i) 100% of the amount of such tax for the prior taxable period and (ii) a fraction, the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire tax period. The amount of tax allocable to the Sellers pursuant to this section in excess of amounts allocated thereto as provided for as Priority Claims or Administrative Expense Claims shall be withheld from the Purchase Price, and the Buyer shall be responsible for remitting all Straddle Period Taxes to the appropriate Taxing Authority when due.

10.4 **Cooperation.** Sellers and Buyer agree to furnish to each other upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Business (including access to books and records related to the Business) as is reasonably necessary for the filing of all Tax Returns and other tax filings, the making of any election related to taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding related to taxes. Sellers and Buyer shall provide timely notice to each other in writing of any pending or threatened tax audits, assessments or litigation with respect to the Purchased Assets or the Business for any taxable period for which the other party may have Liability under this Agreement.

ARTICLE XI **CONDITIONS PRECEDENT**

11.1 **Conditions Precedent to Obligations of Buyer.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of the Sellers set forth in Article V shall be true and correct in all material respects as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date)

with the same force and effect as though made on and as of the Closing Date (or such earlier date), and Buyer shall have received a certificate signed by an authorized officer of the Sellers on behalf of all the Sellers, dated the Closing Date, to the foregoing effect;

(b) the Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and Buyer shall have received a certificate signed by an Executive Officer of the Sellers on behalf of all Sellers, dated the Closing Date, to the foregoing effect;

(c) all required consents and all other consents, approvals and actions of, filings with and notices to any Governmental Body or any other Person set forth on Schedule 5.3(b) shall have been duly obtained, delivered, made or given and shall be in full force and effect, provided that Buyer may waive this requirement and Close on the Regulatory Approval Date, with certain Purchased Assets as Non-Transferred Assets under Section 2.5, in its sole discretion;

(d) there shall not have occurred an event or failure to act causing a Material Adverse Change;

(e) the Sellers shall have delivered, or caused to be delivered, to Buyer all of the items set forth in Section 4.2(a);

(f) Buyer shall not have otherwise terminated this Agreement in accordance with the terms of Section 12.1;

(g) the Sale Order and Confirmation Order, as applicable, shall have been entered and shall not be subject to a appeal or a stay and the Bankruptcy Court shall have provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Confirmation Order shall be acceptable to Buyer and shall contain terms and as requested by Buyer. The Sale Order and Confirmation Order, as applicable, shall have become final and non-appealable orders, unless this condition has been waived by Buyer in its sole discretion;

(h) Telecommunications Regulatory Matters.

(i) Buyer will have been duly licensed and/or registered as a provider of regulated telecommunications services and be in good standing to so provide such regulated telecommunications services in each of the jurisdictions set forth in Schedule 11.1(h)(i) hereto, in which jurisdictions the nature of the business to be conducted by Buyer after the Closing Date makes such licensing or registration of Buyer necessary, unless waived by Buyer in its sole discretion.

(ii) Schedule 11.1(h)(ii) hereto sets forth a list of all filings and regulatory approvals required to be obtained under the Telecommunications Laws to enable Buyer to purchase the Purchased Assets and consummate the transaction contemplated by

this Agreement, other than such filings and regulatory approvals that pertain solely to Buyer's authorization to operate the Purchased Assets after the Closing Date (*i.e.*, applications for certificates of public convenience and necessity or similar authorizations), and includes all filings and regulatory approvals required for Sellers to hold full and complete qualification, licensing and other regulatory approvals for all conduct of the Business.

(iii) All necessary consents, approvals, and authorizations required under the State Telecommunications Laws for the transfer to Buyer of the customer accounts and other assets of Sellers used in providing intrastate telecommunications services will have been obtained, except for approvals relating solely to Non-Transferred Assets approved by Buyer in its sole discretion.

(iv) There shall be no action, order, claim, suit proceeding, litigation, review, notice or, to the Knowledge of Sellers, investigation or inquiry, pending before the FCC or any State Regulatory Commission, relating to or affecting Sellers or any of their respective properties or assets or any officer or director or shareholder of Sellers, or the payments of sums owing to such authorities as set forth on Schedule 5.12 hereto; and

(i) Any necessary management agreement shall have been entered into and any necessary Bankruptcy Court approvals obtained to do so;

(j) All necessary documents, assignments and agreements have been executed to document the DIP Facility and Sale Facility and the Buyer has a fully perfected first priority security interest and priming lien in all prepetition and postpetition assets; and

(k) All assets of Magenta have been included as Purchased Assets, if the Buyer has given Sellers notice regarding such assets; further, all liabilities of Magenta have been discharged or released, under the Plan or otherwise.

11.2 **Conditions Precedent to the Obligations of Sellers.** The obligations of the Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Sellers in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Buyer set forth in Article VI shall be true and correct in all material respects on and as of the date hereof and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), except that those representations and warranties that are qualified by materiality, Material Adverse Change or similar phrase shall be true and correct in all respects as

of the date hereof and on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date, and the Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(c) all required consents, approvals and actions of, filings with and notices to any Governmental Body or any other Person set forth on Schedule 5.3(b) shall have been duly obtained, made or given and shall be in full force and effect;

(d) Buyer shall have delivered, or caused to be delivered, to the Sellers all of the items set forth in Section 4.2(b);

(e) at or prior to the Closing, Buyer shall have made arrangements, satisfactory to the Buyer in its sole discretion, to promptly pay the Cure Amount set forth on the Cure Schedule, so that the Contracts and Real Property Leases may be assumed by the Sellers and assigned to Buyer in accordance with the provisions of section 365 of the Bankruptcy Code;

(f) at or prior to the Closing, Buyer shall have paid the Closing Cash Payment through an advance on the Sale Facility;

(g) Buyer shall hold authorization to offer telecommunications services, if required, in each jurisdiction in which Sellers provide such services; or, in those States in which Non-Transferred Assets are located, Buyer shall know of no reason why it cannot obtain all such authorizations from State Regulatory Commissions in the Ordinary Course of Business;

(h) The Sellers shall not have otherwise terminated this Agreement in accordance with the terms of Section 12.1; and

(i) Buyer shall have provided Sellers with the Sale Facility on substantially the same terms and conditions (including priority of liens) as the DIP Facility.

ARTICLE XII **TERMINATION**

12.1 **Termination.** Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual consent of Buyer and Sellers.

(b) automatically and without any action or notice by either the Sellers to Buyer, or Buyer to the Sellers, immediately upon:

- (i) the issuance of a final and nonappealable order, decree, or ruling or any other action by a Governmental Body to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets or any material portion thereof contemplated hereby;
 - (ii) approval by the Bankruptcy Court of a transaction otherwise selling or disposing of the Purchased Assets; or
 - (iii) acceptance by Sellers of a transaction otherwise selling or disposing of the Purchased Assets or the Shares pursuant to an Alternative Transaction).
- (c) by Buyer, in its sole discretion:
- (i) if the Bankruptcy Court has not entered the Sale Order by February 1, 2011;
 - (ii) if there has been a violation or breach by the Sellers of any material representation, warranty or covenant contained in this Agreement that has not been waived by Buyer;
 - (iii) on or at any time after the Regulatory Approval Date if the Closing shall not have occurred due to failure to obtain the Regulatory Approval of a Governmental Body;
 - (iv) if, prior to the Closing Date, Sellers' Bankruptcy Cases shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee or examiner with expanded powers is appointed in the Bankruptcy Cases;
 - (v) if there shall be excluded from the Purchased Assets any Contract that is not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than any Seller, to the extent that such consent shall not have been given prior to the Closing and such Contract shall, in the opinion of Buyer in its absolute discretion, prevent it from effectively operating the Business; or
 - (vi) Buyer and Sellers fail to agree to a Wind Down Budget or a Sale Facility Budget by the Closing Date.
- (d) by Sellers, prior to the Closing:
- (i) if there has been a violation or breach by Buyer of any material representation or warranty contained in this Agreement or any action has occurred with respect to the condition precedent set forth in Section 11.2 that (x) has rendered the satisfaction of any condition to the obligations of Sellers impossible or is not curable

or, if curable, has not been cured within ten (10) days following receipt by Buyer of written notice of such breach from Sellers, and (y) has not been waived by Sellers;

- (ii) at any time after the Regulatory Approval Date if the Closing shall not have occurred due to failure to obtain the approval of a Governmental Body;
- (iii) if Buyer's obligation to close (other than the accuracy of any Seller's representations or warranties) have been met, there is no pending appeal and stay pending appeal of the sale contemplated hereunder, Sellers are ready, willing and able to close the sale contemplated hereunder, no Seller is in default of this Agreement, nor is there an event which, with the giving of notice or passing of time, would be a default to this Agreement, and Buyer fails to consummate the Closing within thirty (30) Business Days following the date of satisfaction of the last such condition to Closing;
- (iv) if Buyer and Sellers fail to agree to a Wind Down Budget or a Sale Facility Budget by the Closing Date.

12.2 **Effect of Termination.** In the event of termination pursuant to Section 12.1, this Agreement shall become null and void and have no effect and no party shall have any liability to any other (other than pursuant to the provisions of this Article XII, Article XIII, provisions of this Agreement that relate to sale of all or part of the Purchased Assets to a purchaser other than the Buyer, and any other provisions of this Agreement that expressly survive termination), provided, however, that nothing in this Section 12.2 shall relieve Buyer or Seller of any liability for a breach of this Agreement prior to the date of termination. Should Sellers be in breach of any of their representations or warranties contained in this Agreement, Buyer shall be entitled to waive such breach or elect to terminate this Agreement. If Buyer elects to waive such breach and close the transactions contemplated herein, Buyer shall not be entitled to any damages as a result of such breach and shall not be entitled to set off any of the monies it owes to Sellers under this Agreement as a result of such breach of representation or warranty.

ARTICLE XIII MISCELLANEOUS

13.1 **Survival.** No representations, warranties, covenants and agreements of Seller and Buyer made in this Agreement, including Buyer's assumption of the Assumed Liabilities, shall survive the Closing Date except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for obligations extending after the Closing, or as otherwise expressly provided in this Agreement.

13.2 **Confidential Nature of Information.** The following paragraph is subject to any disclosure requirements under the Bankruptcy Code or imposed by the Bankruptcy Court:

Buyer on the one hand and Sellers on the other hand, each agree that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, at the request of the disclosing party, will return to the other party all copies of nonpublic documents and materials which have been furnished in connection therewith and all transcripts, notes and summaries thereof. Such non-public documents, materials and information shall not be communicated to any third Person (other than to Buyer's and Sellers' counsel, accountants or financial advisors, in each case subject to the recipient's agreement to keep the same confidential). No other party shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Purchased Assets; provided, however, that after the Closing, Buyer may use or disclose any confidential information included in the Purchased Assets or otherwise reasonably related to the Purchased Assets and the Business. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such party from a source other than the disclosing party, (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents or (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed. Notwithstanding clause (iii) of the preceding sentence, in the event that any party is required to disclose any confidential information by applicable law, judicial process or rule of any national securities exchange, it is agreed that the party subject to such requirement will provide the other party with prompt notice of such requirement and such party may seek an appropriate protective order if it so desires.

13.3 **Notices.** Any notices, demands, requests, consents, approvals, reports or other communications required or permitted by this Agreement must be (i) in writing and is deemed given when (a) delivered personally to the recipient, (b) sent by confirmed facsimile before 5:00 p.m. Eastern Time on a Business Day with a copy of such facsimile sent to the recipient by reputable overnight courier service (charges prepaid) on the same day, (c) five (5) days after deposit in the U.S. mail, mailed by registered or certified mail, return receipt requested, postage prepaid, or (d) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); and (ii) addressed to the other party at the address set forth below, or at such other address as either party may designate from time to time in writing in accordance with this Section.

If to Buyer, to: Pivotal Global Capacity LLC
 c/o Pivotal Group, Inc.
 3200 E. Camelback Road, Suite 295
 Phoenix, AZ 85018
 Attention: Jerry Pence
 Telephone: 602-956-7200
 Facsimile: 602-956-2313
 JPence@PivotalGroup.com

with a copy to:

Lewis and Roca, LLP
40 North Central Ave
Phoenix, AZ 85004
Attention: Susan M. Freeman, Esq.
Telephone: 602-262-5756
Facsimile: 602-734-3824
SFreeman@LRLaw.com

If to Sellers, to: Global Capacity Group, Inc., *et al.*
200 South Wacker Drive – Suite 1650
Chicago, IL 60606
Attention: Patrick C. Shutt, CEO, Global Capacity
Telephone: 312-660-5097
Facsimile: 312-613-2422

with a copy to:

Heller, Draper, Hayden, Patrick & Horn, L.L.C.
650 Poydras Street - Suite 2500
New Orleans, LA 70130
Attention: Douglas S. Draper
Telephone: 504-299-3333
Facsimile: 504-525-3761

and

Shefsky & Froelich Ltd
111 East Wacker Drive – Suite 2800
Chicago, IL 60601
Attention: Mitchell D. Goldsmith
Telephone: (312) 836-4006
Facsimile: (312) 275-7569

13.4 **Successors and Assigns.**

(a) Buyer shall have the right to assign to an Affiliate any of its rights or obligations under this Agreement in whole or in part (including the right to acquire any of the Purchased Assets). In the event of any assignment pursuant to this Section 13.4(a), Buyer shall not be relieved of any liability or obligation hereunder.

(b) Buyer shall have the right to assign this Agreement or any of its rights or obligations hereunder as collateral to any lender of Buyer; provided, however, that no such assignment shall relieve Buyer of its obligations to the Sellers hereunder.

(c) Sellers shall not assign this Agreement or any of their rights or obligations hereunder and any such assignment shall be void and of no effect.

(d) This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto, including any trustee appointed in any of the Bankruptcy Cases or subsequent chapter 7. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided in this Section 13.4.

13.5 **Access to Records after Closing.** For a period of five (5) years after the Closing Date, Sellers and their representatives shall have reasonable access to all of the books and records of the Purchased Assets transferred to Buyer hereunder to the extent that such access may reasonably be required by Sellers in connection with matters relating to or affected by the operations of the Business on or prior to the Closing Date. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours. Sellers shall be solely responsible for any costs or expenses incurred by them pursuant to this Section 13.5. If Buyer shall desire to dispose of any of such books and records prior to the expiration of such five-year period, Buyer shall, prior to such disposition, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such books and records as Sellers may select. In the event Sellers seek and receive approval from the Bankruptcy Court to abandon or destroy books and records, Sellers shall advise Buyer of said order and Buyer shall be relieved of its obligations under this Section 13.5 and may, in its sole discretion, destroy any and all books and records related to the Business.

13.6 **Entire Agreement; Amendments.** This Agreement (including the Schedules and Exhibits hereto and any management agreement) represents the entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13.7 **Interpretation.** Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. No party shall benefit from any rule construing this Agreement against that party as drafter, and it is acknowledged that the document is jointly drafted.

13.8 **Expenses.** Each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants, except as otherwise provided in this Agreement.

13.9 **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

13.10 **Execution in Counterparts; Facsimile and E-mail Delivery.** This Agreement may be delivered via facsimile or e-mail transmission of an executed counterpart of or signature page to this Agreement and may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each of Sellers and Buyer and any facsimile, e-mail pdf or photocopy of an executed counterpart of or signature page to this Agreement shall be given the same effect as the original.

13.11 **Further Assurances.** On and after the Closing Date (i) Sellers shall deliver to Buyer such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may reasonably request or as may be otherwise reasonably necessary to vest in Buyer all the right, title and interest of Sellers in, to or under any or all of the Purchased Assets, and (ii) Sellers shall take all steps as may be reasonably necessary to put Buyer in actual possession and control of all the Purchased Assets and to obtain the full benefit thereof.

13.12 **Governing Law; Forum.** This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court or the Bankruptcy Court accepts jurisdiction, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, any state or federal court having competent jurisdiction in Delaware.

13.13 **Waiver of Jury Trial.** EACH PARTY HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY

BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

13.14 **Negotiated Agreement.** Each of the Sellers and Buyer acknowledges that it has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that, if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any party because such party or its representatives drafted such provision.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year that above written.

SELLERS:

CAPITAL GROWTH SYSTEMS, INC.

By: _____
Name:
Title:

20/20 TECHNOLOGIES, INC.

By: _____
Name:
Title:

20/20 TECHNOLOGIES I, LLC

By: _____
Name:
Title:

CENTREPATH, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY GROUP, INC.

By: _____
Name:
Title:

CAPITAL GROWTH ACQUISITION, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY DIRECT, LLC, (GCD)

By: _____
Name:
Title:

NEXVU TECHNOLOGIES, LLC

By: _____
Name:
Title:

FNS 2007, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY HOLDCO, LLC

By: _____
Name:
Title:

BUYER:

PIVOTAL GLOBAL CAPACITY, LLC,
an Arizona limited liability company

By: FFN Investments, LLC
an Arizona limited liability company,
Its: Sole Member

By: Pivotal Capital Corporation,
an Arizona corporation
Its: Manager

By: _____
Richard Garner
Its: Treasurer

Schedule 1.1(a)

Permitted Encumbrances

None.

Schedule 2.1(a)**Personal Property**

GC Entity	Item	Category	Purchase/In Service Date
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/2/2007
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/16/2007
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/16/2007
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/25/2007
2020 Technologies, Inc.	Thinkpad T60	Computer Hardware	2/9/2007
2020 Technologies, Inc.	Thinkpad T60	Computer Hardware	2/9/2007
2020 Technologies, Inc.	Thinkpad T60	Computer Hardware	2/9/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	2/22/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	2/22/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	2/22/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	3/1/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	3/7/2007
2020 Technologies, Inc.	Desk	Furniture & Fixtures	4/1/2003
2020 Technologies, Inc.	LaCasse office furn	Furniture & Fixtures	6/24/2003
2020 Technologies, Inc.	Fireproof Filing Cabinets	Furniture & Fixtures	3/18/2003
2020 Technologies, Inc.	Tops South office Furn	Furniture & Fixtures	8/28/2005
2020 Technologies, Inc.	Office Furn MN	Furniture & Fixtures	5/1/2007
2020 Technologies, Inc.	Office Furn MN	Furniture & Fixtures	5/1/2007
2020 Technologies, Inc.	Galaxy bow front desk	Furniture & Fixtures	5/1/2007
2020 Technologies, Inc.	Dell Direct Sales	Computer Hardware	6/30/2007
2020 Technologies, Inc.	Dell Direct Sales	Computer Hardware	7/19/2007
2020 Technologies, Inc.	Dell Direct Sales	Computer Hardware	12/17/2007
Centrepath, Inc.	AC unit 265 Winter	Leasehold Improvements	4/1/2008
Centrepath, Inc.	New NOC - Majestic Const.	Leasehold Improvements	6/1/2009

GC Entity	Item	Category	Purchase/In Service Date
Centrepath, Inc.	Dim Data	Computer Hardware	7/1/2007
Centrepath, Inc.	Toshiba 46" HDTV - NOC	Computer Hardware	1/8/2008
Centrepath, Inc.	PC servers in India	Computer Hardware	7/1/2008
Centrepath, Inc.	Test system platform	Computer Hardware	7/1/2009
Centrepath, Inc.	Power conditioning	Computer Hardware	6/30/2010
Centrepath, Inc.	GP Licenses	Computer Software	6/20/2007
Centrepath, Inc.	Cisco 8.5 UPG to 8.5	Computer Software	1/1/2008
Centrepath, Inc.	5 Citrix licenses purchase	Computer Software	6/1/2008
Centrepath, Inc.	Server	Network Infrastructure	7/2/2007
Centrepath, Inc.	TTL supply - Router/Cisco	Network Infrastructure	5/1/2008
Global Capacity Direct, LLC	New Laptops, Port Replicators and Memory	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	New Upss And Photoshop	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	New Hire Laptop	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptop Doc Station	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptop Doc Station	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptop Doc Station	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	HP Montor	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Network Upgrade	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptops allocated from VUS	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptops allocated from VUS	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Router	Computer Hardware	11/1/2009
Global Capacity Direct, LLC	Computer Equipment	Computer Hardware	5/1/2010
Global Capacity Direct, LLC	Sun Systems Gold Server	Computer Hardware	5/1/2010
Global Capacity Direct, LLC	Computer Software Rating system	Computer Software	11/22/2008
Global Capacity Direct, LLC	Capitalize Oracle Enhancements vendor CSWL	Computer Software	11/22/2008
Global Capacity Direct, LLC	Capitalize Oracle Enhancements vendor CSWL	Computer Software	11/22/2008
Global Capacity Direct, LLC	Software Update - PV+	Computer Software	11/22/2008
Global Capacity Direct, LLC	Software	Computer Software	11/22/2008
Global Capacity Direct, LLC	CIT Lease 1	Computer Hardware	11/22/2008

GC Entity	Item	Category	Purchase/In Service Date
Global Capacity Direct, LLC	CIT Lease 2	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	SF Cable And Connectors - 24 Conductor 735a 1000 Ft	Leasehold Improvements	11/22/2008
Global Capacity Direct, LLC	Labor and Electrical Supplies for SF Colo	Leasehold Improvements	11/22/2008
Global Capacity Direct, LLC	Furniture	Furniture & Fixtures	6/1/2007
Global Capacity Group, Inc	Cisco timing communications control wsoftware	Computer Hardware	7/11/2007
Global Capacity Group, Inc	Wireless fiber link	Computer Hardware	12/1/2007
Global Capacity Group, Inc	Laptops- K. Towns/A. Ramirez	Computer Hardware	2/14/2007
Global Capacity Group, Inc	Server, edge rack, +++	Computer Hardware	3/13/2007
Global Capacity Group, Inc	2 laptops/2desktops	Computer Hardware	4/14/2007
Global Capacity Group, Inc	Laptop/printer - B.Horton	Computer Hardware	7/1/2007
Global Capacity Group, Inc	Furniture	Furniture & Fixtures	1/14/2007
Global Capacity Group, Inc	DS3M card	Network Infrastructure	12/18/2008
Global Capacity Group, Inc	Cross connect Card	Network Infrastructure	11/19/2008
Global Capacity Group, Inc	Cross connect card	Network Infrastructure	8/17/2009
Global Capacity Group, Inc	OC3/12/48	Network Infrastructure	8/17/2009
Global Capacity Group, Inc	DS3 card #40913329 via CP	Network Infrastructure	7/24/2009
Global Capacity Group, Inc	Various Cisco Components	Network Infrastructure	1/21/2009
Global Capacity Group, Inc	Various Cisco Components	Network Infrastructure	1/25/2009
Global Capacity Group, Inc	Various Cisco Components	Network Infrastructure	1/15/2009
Global Capacity Group, Inc	One Market Place assets	Network Infrastructure	4/30/2010
Global Capacity Group, Inc	One Market Place assets	Network Infrastructure	1/29/2010
Magenta netLogic, Ltd	Sharepoint server 2003	Computer Hardware	n/a
Magenta netLogic, Ltd	CVS Server	Computer Hardware	n/a
Magenta netLogic, Ltd	Version 3.6 20 Blackberry device/user licenses	Computer Hardware	11/30/2001
Magenta netLogic, Ltd	CLM Portal Server SQL 2005x2cpu License Win2k3 R2 Enterprise 64bit	Computer Hardware	8/20/2007

GC Entity	Item	Category	Purchase/In Service Date
Magenta netLogic, Ltd	x64 SQL 2005 64 bit for CLM	Computer Hardware	4/22/2009
Magenta netLogic, Ltd	clmp2.magenta-netlogic.com (SQL)	Computer Hardware	7/14/2003
Magenta netLogic, Ltd	Netvespa Server for COLT	Computer Hardware	3/20/2003
Magenta netLogic, Ltd	Pre- Production Netvespa Server for COLT	Computer Hardware	3/20/2003
Magenta netLogic, Ltd	Build + Development Tools	Computer Hardware	n/a
Magenta netLogic, Ltd	SQL 2005 x64	Computer Hardware	6/11/2008
Magenta netLogic, Ltd	Netvespa Test Dev server	Computer Hardware	3/11/2004
Magenta netLogic, Ltd	Primary DNS, File Server for non critical files	Computer Hardware	n/a
Magenta netLogic, Ltd	SQL 2005, Intranet, GC Internal	Computer Hardware	3/31/2003
Magenta netLogic, Ltd	File Server , Backup to Folder, Backup Tape, Backup exec 9	Computer Hardware	n/a
Magenta netLogic, Ltd	Exchange Server 2003 SP2 Active Directory Domain Controller, Secondary DNS	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Main Firewall in Salford Licenced for 100 IP nodes	Computer Hardware	11/30/2003
Magenta netLogic, Ltd	SMS Sender - Gateway	Computer Hardware	12/31/1999
Magenta netLogic, Ltd	Windows Shaepoint Services - WSS 3.0 SP2 On Windows Server 2003 R2 Std x64	Computer Hardware	2/4/2009
Magenta netLogic, Ltd	Staging CLM	Computer Hardware	3/11/2004
Magenta netLogic, Ltd	Not in use, Testing and used to host VMware	Computer Hardware	12/6/2001
Magenta netLogic, Ltd	3com SuperStack3 48 x 10/100 + 2 x 1000	Computer Hardware	n/a
Magenta netLogic, Ltd	3com SuperStack3 48 x 10/100 + 2 x 1000	Computer Hardware	n/a
Magenta netLogic, Ltd	3com SuperStack3 48 x 10/100 + 1 x 1000	Computer Hardware	n/a

GC Entity	Item	Category	Purchase/In Service Date
Magenta netLogic, Ltd	24 x 10/100/1000	Computer Hardware	n/a
Magenta netLogic, Ltd	16 x 10/100/1000	Computer Hardware	n/a
Magenta netLogic, Ltd	clmp3.magenta-netlogic.com (SQL)	Computer Hardware	7/14/2003
Magenta netLogic, Ltd	Active Directory DC DHCP WINS Secondary DNS	Computer Hardware	12/6/2001
Magenta netLogic, Ltd	Sharepoint 2007 Server for Dev Wiki	Computer Hardware	n/a
Magenta netLogic, Ltd	WAN Router 10/100Mb 4 ports + 10/100mb WAN port	Computer Hardware	12/31/2006
Magenta netLogic, Ltd	ADSL Modem/Router 4x 10/100 ports + DSL port	Computer Hardware	12/31/2004
Magenta netLogic, Ltd	Virtela - Netvespa server	Computer Hardware	3/31/2003
Magenta netLogic, Ltd	Spam Filter, PPTP VPN, DNS Server for external Zones	Computer Hardware	11/7/2002

Schedule 2.1(b)

Real Property Leases

Leases for Assumption and Assignment

265 Winter LLC – Lease Agreement and related Amendments for office space at 265 Winter Street, Waltham, MA

G&L Glastonbury – Lease Agreement and related Amendments for office space at 148 Eastern Blvd, 3rd Floor, Glastonbury, CT

University of Salford – Agreement for Tenancy at Will to Magenta netLogic, Ltd for office space at University of Salford, Technology House, Lissadel Street, Salford, M6 6AP

Leases for Rejection

ABN AMRO Bank N.V. – Agreement of Sublease for office space at 49 E 52nd Street, 7th Floor, New York, NY – to be rejected with an effective date of February 28, 2011

Orbitz, LLC – Agreement of Sublease for office space at 200 S Wacker Drive, 16th Floor, Chicago, IL – to be rejected with an effective date of April 30th, 2011

Global Capacity Direct, LLC – Agreement of Sublease to Vanco US, LLC for office space at 200 S Wacker Drive, Suite 1600, Chicago, IL - to be rejected with an effective date of April 30, 2011

Paeth Properties – Lease Agreement for office space at 399 Wall Street, Unit B, Glendale Heights, IL (See Schedule 5.5(c)) – to be rejected with an immediate effective date

Schedule 2.1(c)(i)

Contracts with Customers and Licenses to be assumed

CUSTOMER / CONTRACTING PARTY	CONTRACT
Abovenet Communications	Statements of Work
AboveNet Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Acceris Communications Corp	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Access Point, Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Access2go	Lattis Agreement and related Renewals
Access2Go	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Accessline Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Aero Communications, LLC	Lattis Agreement and related Renewals
Agennix Incorporated	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Allstream/ MTS	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
American Consulting Services., LLC	Lattis Agreement and related Renewals
American Telesis	Lattis Agreement and related Renewals
Americatel (Startec)	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
AT&T Corp.	Agreement No. 20041122.3.C and related Amendments and Schedules
AT&T Global Network Services (UK)	Master Service Agreement
AT&T Long Distance-MISOCX	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
AT&T Services, Inc.	Lattis Agreement and related Renewals
Bayer Corporate and Business Services, LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Bayring Communications	Lattis Agreement and related Renewals
BCE Nexxia	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
BCE Nexxia	Universal Transport Exchange Agreement UTX with Addendums
Bell Canada	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Blue Wireless	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
BRASIL TELECOM OF AMERICA, INC. / GLOBENET	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Broadvox	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Broadwing	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Brookfield Residential Property Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
BT Ignite	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Buckeye Telesystems, Inc.	Lattis Agreement and related Renewals
Business Solutions	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cavalier	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cavalier Telephone	Lattis Agreement and related Renewals
Cavalier Telephone	Development & Data Provider Agreement and related Exhibits
Cbeyond Communications, LLC	Lattis Agreement and related Renewals
Cellular One of East Texas	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
CenturyLink- Lightcore/Embarq/ CenturyTel	Lattis Agreement and related Renewals
CenturyLink-Centurytel	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cerner	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Chastang Ford (Bayou City Ford)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Choice Networks Solutions, Inc	Lattis Agreement and related Renewals
Cingular Wireless	Lattis Agreement and related Renewals
Citizens Telecom Services Company, LLC.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Citynet, LLC	Lattis Agreement and related Renewals
Clarity Communications Group, Inc (Network Clarity)	Lattis Agreement and related Renewals
Cogent Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Comcast Cable Communications Holdings, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Comcast Corporation	Step-In Agreement
Comcast IP Services, LLC	Lattis Agreement and related Renewals
Communication Infrastructure Corp	Lattis Agreement and related Renewals
Community Hospitals of Indiana, Inc.	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Comtel Telecom Assets LP d/b/a Excel Telecommunications	Lattis Agreement and related Renewals
Consolidated Communications	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Consolidated Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Conterra Ultra Broadband, LLC	Lattis Agreement and related Renewals
Core180 Inc	Agreement & Annex for Supply of Web-Based Services and any related Exhibits or Amendments
Covad Communications Company	Lattis Agreement and related Renewals
Covenant Church of Sherman	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cox Business Services, LLC	Lattis Agreement and related Renewals
Cricket Communications	Lattis Agreement and related Renewals
Cyrus One	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Dataside	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Deltacom, Inc	Lattis Agreement and related Renewals
Dimension Data North America, Inc.	Subcontract Agreement
DKR Capital Partners, L.P.	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Duke Energy	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
DukeNet Communications, L.L.C.	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Electric Lightwave, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Empirical Networks	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Enventis Telecom	Lattis Agreement and related Renewals
Equant Inc d/b/a Orange Business Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Excel	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Fairpoint Communications	Lattis Agreement and related Renewals
Fayez Sarofim and Company	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
FiberTower Corporation	Lattis Agreement and related Renewals
First Communications, LLC	Lattis Agreement and related Renewals
FPL FiberNet	Lattis Agreement and related Renewals
Frontier Communications	Lattis Agreement and related Renewals
Frontier Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Gainesville Regional Utilities (GRU)	Lattis Agreement and related Renewals
GC Telecommunications, Inc.(Global Crossing)	Lattis Agreement and related Renewals
GCEC Telecom	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Gecko Tech	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Geckotech, LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Georgia Public Web	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Global Colocation Services, LLC f/k/a GETCO, LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Global Crossing	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Global Telecom and Technology	Lattis Agreement and related Renewals
GMAC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Grande Communications Network, Inc.	Lattis Agreement and related Renewals
Group Telecom, a Division of Bell Canada	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
GSA -General Services Administration	Lattis Agreement and related Renewals
Hammond Residential Real Estate	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Hannaford Bros. Co.	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Hawaiian Telcom, Inc	Lattis Agreement and related Renewals
Hewlett Packard Limited	Framework Agreement and related Exhibits
Hewlett Packard Limited	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Hewlett Packard Company - Caitlin Insurance Group	Statement of Work for subcontracting of Solutions & Projects
Hines	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Hypercube, LLC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
IBM	Software and Services Engagement Agreement and related Attachments, Amendments and Statements of Work
Independence Blue Cross	Subcontracting of Solutions & Projects
Integra Telecom, Inc.	Lattis Agreement and related Renewals
Integra Telecom, Inc.	Lattis Agreement and related Renewals
International Facility Management Association	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Iron Mountain	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
KCOM Group PLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
KDL - Norlight	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Kentucky Data Link. Inc.	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Klotron	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Kool Connect	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
KPN B.V.	Services Agreement for Optimization Services
KPN Ins Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
LA Ward Cellular	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Lansdowne-Moody	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
LEGACY RESERVES SERVICES INC.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Level 3 Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Level 3 Communications	Lattis Agreement and related Renewals
Lexent Metro Connect LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Lightower (Hudson Valley)	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Logical Net	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Logical Telecom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
LS Networks, Inc /Lightspeed Networks dba	Lattis Agreement and related Renewals
Manhattan Telecommunications Corporation	Lattis Agreement and related Renewals
Marionette Facilities Ltd. f/k/a BP Insurance	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Masergy Communications, Inc.	Lattis Agreement and related Renewals
MBO Corporation	Lattis Agreement and related Renewals
Mc Dermott Will & Emery	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
MegaPath Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
MetroPCS Wireless, Inc.	Lattis Agreement and related Renewals
Missouri Network Alliance, LLC	Lattis Agreement and related Renewals
National Clearing House Assoc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
New Edge Networks	Lattis Agreement and related Renewals
New York City Department of Education	DWDM Monitoring, Maintenance & Problem Solving Services Agreement

CUSTOMER / CONTRACTING PARTY	CONTRACT
Novatel	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
nTelos	Lattis Agreement and related Renewals
NTT America	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
One Communications	Lattis Agreement and related Renewals
Pac.West Telecom, Inc.	Lattis Agreement and related Renewals
Pacific Union International Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Pacnet	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Pacnet	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
PaeTec Communications	Lattis Agreement and related Renewals
PaeTec Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Paradigm Telecom, Inc.	Lattis Agreement and related Renewals
People Support Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
PNM Resources	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Presidio	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Presidio Networked Solutions	Master Subcontractor Agreement and related Statements of Work
Primus Telecommunications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
ProPath	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Qwest (OnFiber)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Qwest Services Corporation	Lattis Agreement and related Renewals
Qwest Services Corporation	Master Services Agreement and related Addendums
RCN Metro. (Neon Optica)	Lattis Agreement and related Renewals
Reliance Globalcom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
RMCC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Sandwich Isles Communications, Inc	Lattis Agreement and related Renewals
SC Net dba Spirit Telecom	Lattis Agreement and related Renewals
Scana Communications, Inc.	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Société Internationale de Télécommunications Aéronautiques (SITA)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Southern California Edison	Lattis Agreement and related Renewals
Southern Light, LLC	Lattis Agreement and related Renewals
Sprint	Lattis Agreement and related Renewals
Sprint Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Staten Island University Hospital	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Suddenlink Communications	Lattis Agreement and related Renewals
Symcor Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Syringa Networks, LLC	Lattis Agreement and related Renewals
TATA Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
TDS Telecom, Inc.	Lattis Agreement and related Renewals
Teague Nall and Perkins	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Tel West	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Telefonica Data USA	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telefonica International Wholesale Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telekenex Communications	Lattis Agreement and related Renewals
Telepacific Communications, Corp	Lattis Agreement and related Renewals
Telequality Communications	Lattis Agreement and related Renewals
TeleQuality Communications Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
TeleSpan Communications, LLC	Lattis Agreement and related Renewals
TeliaSonera	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telus Corporation	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telus Corporation	Universal Transport Exchange Agreement UTX
Texas New Mexico Power Company	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Texlink	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
The Bank of New York Mellon Corporation	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work

CUSTOMER / CONTRACTING PARTY	CONTRACT
The Children's Hospital of Philadelphia	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
The Trustees of the University of Pennsylvania	Master Consulting Agreement and related Work Orders
Time Warner Cable	Lattis Agreement and related Renewals
Time Warner Cable Residential	Lattis Agreement and related Renewals
Time Warner Telecom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Time Warner Telecom Holdings, Inc	Lattis Agreement and related Renewals
T-Mobile USA	Lattis Agreement and related Renewals
Traffic.com a NAVTEQ Company	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Transaction Network Services, Inc.	Lattis Agreement and related Renewals
Transaction Network Services, Inc.	Lattis Agreement and related Renewals
TRC Telecom Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Tri-County MHMR Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
T-Systems	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
TW Telecom (Xspedius)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
TWC Communications, LLC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
US Cellular Corporation	Lattis Agreement and related Renewals
US Oncology	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
US Signal Company , LLC	Lattis Agreement and related Renewals
USPS-OIG	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Vanderbilt University Medical Center	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Verizon #78 Neill	Lattis Agreement and related Renewals
Verizon BSG # 76	Lattis Agreement and related Renewals
Verizon -# 75	Lattis Agreement and related Renewals
Verizon Business #82(MCI Legacy+Enterprise)	Lattis Agreement and related Renewals
Verizon Business Government Mkts	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Verizon Data Services LLC #74	Lattis Agreement and related Renewals
Verizon Select Services, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Verizon Services # 77	Lattis Agreement and related Renewals
Verizon VSO - 2 # 81	Lattis Agreement and related Renewals
Verizon VSO # 80	Lattis Agreement and related Renewals
Verizon Wireless- Christina Neumire	Lattis Agreement and related Renewals
Verizon Wireless Mid-Atlantic (NET PHIL)	Lattis Agreement and related Renewals
Verizon Wireless NET AR OK	Lattis Agreement and related Renewals
Verizon Wireless NET CAROLINAS REGION	Lattis Agreement and related Renewals
Verizon Wireless NET Carolinas Region Moss TN	Lattis Agreement and related Renewals
Verizon Wireless NET FL Gulf Coast	Lattis Agreement and related Renewals
Verizon Wireless NET Georgia Region	Lattis Agreement and related Renewals
Verizon Wireless NET Greatplain KS MO	Lattis Agreement and related Renewals
Verizon Wireless NET Houston Gulf Coast	Lattis Agreement and related Renewals
Verizon Wireless NET IL WI MI	Lattis Agreement and related Renewals
Verizon Wireless NET MI IN KY#23846	Lattis Agreement and related Renewals
Verizon Wireless Net New England East	Lattis Agreement and related Renewals
Verizon Wireless NET New England West	Lattis Agreement and related Renewals
Verizon Wireless NET New York Metro	Lattis Agreement and related Renewals
Verizon Wireless NET NJ	Lattis Agreement and related Renewals
Verizon Wireless NET NO CA NEVADA	Lattis Agreement and related Renewals
Verizon Wireless NET PA WV OHIO IN KY	Lattis Agreement and related Renewals
Verizon Wireless NET VA	Lattis Agreement and related Renewals
Verizon Wireless Net WB	Lattis Agreement and related Renewals
Verizon Wireless Northeast Area	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Verizon Wireless Northeast Area Structure Consulting Group, Inc	Lattis Agreement and related Renewals
Verizon Wireless Texas	Lattis Agreement and related Renewals
Virtela Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Warwick Valley Telephone Company	Lattis Agreement and related Renewals
WFMU	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Windstream (D&E Communications)	Lattis Agreement and related Renewals
Windstream (NuVox Communications)	Lattis Agreement and related Renewals
Windstream Communications	Lattis Agreement and related Renewals
Windwave Communications	Lattis Agreement and related Renewals
Wisconsin Independent Network	Lattis Agreement and related Renewals
Wisconsin Independent Networks (WINs)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
XO Communications	Lattis Agreement and related Renewals
XO Communications	USX User Agreement, Development Agreement and related Exhibits, Statements of Work and Enhancements
XO Communications, Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Xtel Communications, Inc.	Lattis Agreement and related Renewals
Youghiogheny Communications-Texas, LLC	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Zayo Bandwidth - Minnesota	Lattis Agreement and related Renewals
Zayo Bandwidth (fka FiberNet Telecom)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Zayo Managed Services, LLC	Lattis Agreement and related Renewals
Zeus Wireless	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

Schedule 2.1(c)(ii)

Contracts with Vendors and Equipment Leases to be assumed

VENDOR / CONTRACTING PARTY	CONTRACT
265 WINTER Street LLC / Hobbs Brook Management	Lease Agreement and related Amendments
360 Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Abovenet Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Allied Communications	Maintenance Agreement
Alpheus Communications, LP	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
AT&T	UTX
AT&T	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
AT&T Global Services	AT&T Alliance Program Agreement – EBS
AT&T Wireless	Corporate Cellular Account # 995683217
BCE Nexxia	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
BUCKEYE TELESYSTEM TELEPHONE	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Cable & Wireless -Energis Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cable Television Laboratories, Inc.	Digital Certificate Authorization Agreement
CableOne, Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Cavalier	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
CCMI Center for Communications Management Information	TelView/Qtel 9000 User Agreement and related Amendments
CenturyTel Fiber Company II,LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Chicago Title Insurance Company	Strict Joint Order Escrow Trust and Confidentiality Agreement and related Exhibits
Chicago Title Insurance Company	Strict Joint Order Escrow Trust and Confidentiality Agreement and related Exhibits
Chicago Title Insurance Company	Strict Joint Order Escrow Trust and Confidentiality Agreement and related Exhibits
Chillicothe Telephone Company	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Cignal	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cincinnati Bell Telephone Company LLC.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Citynet Fiber Network LLC	General Services Agreement and related Schedules
Cogent Communications	Network Services Terms & Conditions and related Addendum
Colospace, Inc.	Colocation Service Agreement
Colt	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Comcast	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Comtel Telecom Assets, LP d/b/a Excel Telecommunications	Three Party Escrow Services Agreement
Continental Resources Inc.	Subcontractor Agreement
Core180 Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
CoStreet Communications	Telecommunications Service Agreement and related Addendum
Covad	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cox	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Data Direct Technologies	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Dominion Telecom(Elantic)(Cavalier)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
DukeNet Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
e.Spire Communications (Time Warner Telecom)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Electric Lightwave, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
ElPaso (Alpheus)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Emcor Services	Maintenance Agreement
Enventis	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Equinix	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
FastTrack Communications, Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Fibernet (Zayo)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
FirstDigital Telecom	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
FRONTIER	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Frontier Communications of Montana	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
FWR Communication Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
G&L Glastonbury, LLC	Lease Agreement and related Amendments

VENDOR / CONTRACTING PARTY	CONTRACT
Geckotech LLC	Customer Order Agreement VOIP Services
Geneseo Telephone Co.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
GeoResults	Wire center boundary and central offices location information
Georgia Public Web	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Global Crossing	UTX
Global Crossing	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Granite Telecommunications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
GTA	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
GTS Carrier Services	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Hugh O'Kane Electric	Emergency Restoration Agreement
ICTX	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Informi GIS	Contract for collecting and processing of property information, etc.
Innercity Fibernet, LLC	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Insight Direct USA, Inc.	Managed Email Services
Insight DSL	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Intellifiber Networks (fka Cavalier)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Internap Network Services Corporation	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Interstate Fibernet	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Iowa Network Services	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
IP Communications Corp	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
IP Networks Inc	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
IPC Network Services, Inc. (fka Westcom)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
IRIS Network	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Iron Mountain	Three Party Escrow Agreement
Iron Mountain Intellectual Property Management, Inc.	Three Party Escrow Services Agreement
Kentucky Data Link/ Norlight Telecommunications, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Killet Software Ing. -GbR	License Agreement for use of Spatial Data

VENDOR / CONTRACTING PARTY	CONTRACT
Klotron, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
KPNQwest Services UK Ltd.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3	UTX
Level 3 Communications	Partner Agreement
Level 3 Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3/ Broadwing	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3/ Broadwing	UTX
Level 3/ Wiltel	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3/ Wiltel	UTX
Lighttower Fiber Networks	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Lipan Telephone Co	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Local Fiber LLC	Telecommunications Service Agreement and related Addendum
Looking Glass (Level 3)	Channel Management Agreement and related Attachments and Amendments
Looking Glass (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Looking Glass Networks, Inc. (Level 3)	UTX and Addendum
MBO Video LLC	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
McLeod USA (Paetec)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Mediacom	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Metcom Network Services, Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Metropolitan Fiber Systems of Dallas, Inc.	UTX
Mid Atlantic Broadband Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
MIDCONTINENT COMMUNICATIONS (DSL)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
National Exchange Carrier Association	Data License and Reseller Agreement
Navega	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
NaviSite, Inc.	Master Services and Reseller Agreement
NEON (RCN)(Sidera)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Nextlink/ XO	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Northwest Telephone/ Zayo	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Novatel	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Ntirety	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
NTS Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
One Communications-Connecticut Telephone	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
OnFiber (Qwest)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Optimum Lightpath, Inc. - Cablevision	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Oracle America, Inc	Software Updated License & Support for Service Contract # 4961155 (Oracle Database)
Paetec	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Pitney Bowes Business Insight	Address validation and geocode
Progress Telecom (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Prosoft	Supplies a pricing application for Germany
Qwest Communications Corp	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
RCN	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
RCN/ Con Ed	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Regulatory and Tax Consultants	Master Services Agreement
Reliance Globalcom/Yipes Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Salesforce.com, Inc.	License Agreement and related Order Forms
SERVICE ELECTRIC CABLE TV	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
SFR (France)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Shaw Business Solutions	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Sprint Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Sunesys, Inc.	Dark Fiber Indefeasible Right of Use Agreement and related Exhibits
SureWest	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Tata Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Telia International	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Telseon	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Telus Communications Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Telx San Francisco, LLC	Interconnection Facilities Licence and 1st Amendment
Time Warner Cable	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Time Warner Telecom (ex Xspedius)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
TRS REN TELCO	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
TW Telecom Holdings	Carrier Services Agreement and related Exhibits
US Carrier Telecom	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
US Signal Company	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
UUNET (Verizon)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
ValleyNet	Capacity Lease Agreement and related Terms & Conditions
Valucom, Inc	Database Agreement
Vanco US LLC	Managed Services Subcontract and related Amendments
Verio/ NTT Communications	Internet Access Agreement
Verizon	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Verosity	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Virtela	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Virtustream	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
VITAL	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Westcom (IPC)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Williams (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Williams (Level 3)	UTX
WILTEL (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Windstream	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
XO Communications	UTX
XO Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Ygnition	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Billstream	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Zayo Group LLC	Individual Service Orders, Change Orders and related Terms & Conditions of Orders

Schedule 2.1(d)**Security and Vendor Deposits, Prepayments and Refunds as of November 30, 2010**

Adequate Assurance Deposits	GC Entity		Amount
New England Fiber	Centrepath	\$	500.00
SUNESYS	Centrepath	\$	5,000.00
Timewarner	Centrepath	\$	14,250.00
UUNET - Verizon	Centrepath	\$	15,855.75
AboveNet	Global Capacity Group	\$	7,440.77
Alpheus Communications, LP	Global Capacity Group	\$	6,608.17
AT&T(0556)	Global Capacity Group	\$	79.11
AT&T(1128)	Global Capacity Group	\$	285.42
AT&T(2215)	Global Capacity Group	\$	77.36
AT&T(2682)	Global Capacity Group	\$	51,989.93
AT&T(4768)	Global Capacity Group	\$	14,862.88
AT&T(6094)	Global Capacity Group	\$	45.69
BCE Nexxia	Global Capacity Group	\$	999.27
Bell Canada	Global Capacity Group	\$	4,876.99
Cogent Communications	Global Capacity Group	\$	2,367.22
Comcast(7514)	Global Capacity Group	\$	366.60
Core 180, Inc.	Global Capacity Group	\$	11,378.24
Covad	Global Capacity Group	\$	1,777.95
Cox Communications (047206201)	Global Capacity Group	\$	46.73
COX COMMUNICATIONS (048207301)	Global Capacity Group	\$	165.53
Cox Communications (117617801)	Global Capacity Group	\$	1,965.39
Cox Communications (167761102)	Global Capacity Group	\$	115.08
Cox Communications (176422301)	Global Capacity Group	\$	55.10
Cox Communications (178295801)	Global Capacity Group	\$	115.27
Eventis Telecom	Global Capacity Group	\$	2,307.25
Excel Commercial	Global Capacity Group	\$	2,504.29
FiberNet Telecom	Global Capacity Group	\$	1,200.00
FWR Communication Networks, Inc.	Global Capacity Group	\$	3,689.08
Grande Communications	Global Capacity Group	\$	2,189.82
Granite Telecom	Global Capacity Group	\$	1,941.89
ICTX	Global Capacity Group	\$	8,046.88
Innercity Fibernet, LLC	Global Capacity Group	\$	3,350.00
Interfacing Company of TX	Global Capacity Group	\$	3,875.00
ITS Direct	Global Capacity Group	\$	79,321.96
Level3	Global Capacity Group	\$	127,283.34
Lipan Telephone Co	Global Capacity Group	\$	58.75

Adequate Assurance Deposits	GC Entity	Amount
One Communications-Connecticut Telephone	Global Capacity Group	\$ 325.67
Paetec	Global Capacity Group	\$ 8,440.99
Qwest-Circuits	Global Capacity Group	\$ 373,554.53
Qwest-DSL Seattle	Global Capacity Group	\$ 172.45
Road Runner LLC(Time Warner)	Global Capacity Group	\$ 541.48
Shaw Business Solutions	Global Capacity Group	\$ 518.39
Switch and Data	Global Capacity Group	\$ 8,178.91
T Mobile	Global Capacity Group	\$ 882.80
Time Warner Cable(5793)	Global Capacity Group	\$ 24.67
Time Warner Telecom(250852)	Global Capacity Group	\$ 10,580.16
Time Warner Telecom(296453)	Global Capacity Group	\$ 738.51
US Signal	Global Capacity Group	\$ 6,996.80
Verizon Business Fios(6173)	Global Capacity Group	\$ 552.60
Verizon Business(18007064/Y2649955)	Global Capacity Group	\$ 6,243.81
Verizon Business(20236151)	Global Capacity Group	\$ 215.48
Verizon Business(8050)	Global Capacity Group	\$ 2,113.33
Verizon Business(Y2109049)	Global Capacity Group	\$ 591.37
Verizon Online(0675)	Global Capacity Group	\$ 276.76
Verizon Online(4641)	Global Capacity Group	\$ 506.54
Verizon Online(4761)	Global Capacity Group	\$ 506.54
Verizon Southwest(0518)	Global Capacity Group	\$ 221.36
Via West	Global Capacity Group	\$ 13,788.70
Virterla	Global Capacity Group	\$ 2,449.20
Virtustream	Global Capacity Group	\$ 1,325.00
Westcom	Global Capacity Group	\$ 1,324.60
Wilshire Connection, LLC	Global Capacity Group	\$ 330.00
XO Communications	Global Capacity Group	\$ 31,132.66
Ygnition Networks, Inc.	Global Capacity Group	\$ 17,155.56
Yipes (Reliance Globalcom)	Global Capacity Group	\$ 3,990.63
Zayo Bandwidth	Global Capacity Group	\$ 910.85
RTC	Global Capacity Group	\$ 18,000.00
Unidentified 8/2	Global Capacity Group	\$ 324.00
AboveNet Communications Inc.	Global Capacity Direct	\$ 4,293.00
AT&T (Carrier)	Global Capacity Direct	\$ 780,963.35
AT&T (BellSouth)	Global Capacity Direct	\$ 74,970.99
AT&T (Pacific Bell)	Global Capacity Direct	\$ 32,152.59
AT&T (NJ)	Global Capacity Direct	\$ 31,888.31
AT&T (Ameritech CO)	Global Capacity Direct	\$ 27,820.47
AT&T (SW Bell)	Global Capacity Direct	\$ 5,406.78
AT&T (Nevada Bell)	Global Capacity Direct	\$ 463.55

Adequate Assurance Deposits	GC Entity	Amount
CenturyTel Fiber Company II,LLC	Global Capacity Direct	\$ 8,544.69
Chillicothe Telephone Company	Global Capacity Direct	\$ 52.22
Cincinnati Bell Telephone Company LLC.	Global Capacity Direct	\$ 35.07
Cogent Communications Inc.	Global Capacity Direct	\$ 40,591.25
Electric Lightwave, Inc.	Global Capacity Direct	\$ 9,403.85
Embarq (fka Sprint/Local)	Global Capacity Direct	\$ 17,796.66
FastTrack Communications, Inc.	Global Capacity Direct	\$ 3,052.31
FiberNet Telecom Group, Inc.	Global Capacity Direct	\$ 15,725.04
First Choice Coffee Services	Global Capacity Direct	\$ 1,209.67
Frontier Communications of Montana	Global Capacity Direct	\$ 8,957.94
Geneseo Telephone Co.	Global Capacity Direct	\$ 1,256.66
Global Crossing	Global Capacity Direct	\$ 44,343.75
INETWORKS Group, Inc	Global Capacity Direct	\$ 60.48
Interstate FiberNet Inc.	Global Capacity Direct	\$ 6,127.26
IRIS Networks	Global Capacity Direct	\$ 12,000.00
Level 3 - (Broadwing)	Global Capacity Direct	\$ 42,772.87
Level 3 (Williams)	Global Capacity Direct	\$ 36,632.33
Level 3 Communications	Global Capacity Direct	\$ 26,605.28
MBO Video LLC	Global Capacity Direct	\$ 1,450.31
Metcom Network Services, Inc.	Global Capacity Direct	\$ 2,375.00
Navega	Global Capacity Direct	\$ 25,327.78
NetWolves Network Services	Global Capacity Direct	\$ 31,772.39
NTS Communications	Global Capacity Direct	\$ 1,329.98
Optimum Lightpath, Inc. - Cablevision	Global Capacity Direct	\$ 7,101.38
Qwest	Global Capacity Direct	\$ 179,628.58
RCN Communications	Global Capacity Direct	\$ 5,537.89
Shaw Business Solutions	Global Capacity Direct	\$ 393.33
Sprint..	Global Capacity Direct	\$ 61,575.51
SureWest	Global Capacity Direct	\$ 308.63
Switch and Data	Global Capacity Direct	\$ 1,082.54
Teleglobe USA Inc.	Global Capacity Direct	\$ 1,150.00
Telus Communications Inc.	Global Capacity Direct	\$ 3,586.37
Time Warner Telecom	Global Capacity Direct	\$ 17,264.47
US Signal	Global Capacity Direct	\$ 1,917.94
Verizon Business - (MCI Worldcom)	Global Capacity Direct	\$ 506,280.75
Verizon RBOC (Wholesale)	Global Capacity Direct	\$ 69,841.59
Verosity Technology Partners	Global Capacity Direct	\$ 1,155.93
Windstream Communications	Global Capacity Direct	\$ 6,416.80
XO Communications Inc.	Global Capacity Direct	\$ 89,852.70
Zayo Bandwidth	Global Capacity Direct	\$ 6,072.76

Adequate Assurance Deposits	GC Entity	Amount
Northwest Telephone Inc.	Global Capacity Direct	\$ 3,719.29
Level 3 - (Looking Glass Networks)	Global Capacity Direct	\$ 19,164.38
IPC Network Services, Inc. (fka Westcom)	Global Capacity Direct	\$ 13,798.10
Mid-Atlantic Broadband Cooperative	Global Capacity Direct	\$ 9,595.00
Reliance Globalcom (fka Yipes Enterprise Service)	Global Capacity Direct	\$ 9,129.94
COX Communications, Inc. Access Billing	Global Capacity Direct	\$ 8,749.92
On Fiber Communications Inc.	Global Capacity Direct	\$ 7,005.00
supplier inactive - purchased	Global Capacity Direct	\$ 5,489.58
Hudson Valley DataNet, LLC	Global Capacity Direct	\$ 4,268.77
McLeod USA Co	Global Capacity Direct	\$ 3,402.87
Cavalier Telephone (Talk America)	Global Capacity Direct	\$ 3,157.96
Cavalier Telephone LLC (Elantic)	Global Capacity Direct	\$ 2,147.01
		\$ 3,234,083.87

Vendor Deposits	GC Entity	Description	Amount
ColoSpace, Inc.	Centrepath	Deposit - Last month's rent	\$ 7,520.00
UST-GEPT LP	Capital Growth Systems	Deposit on 500 W. Madison Office	\$ 25,000.00
Paeth Properties	Capital Growth Systems	Frontrunner office space deposit	\$ 12,600.00
Bell South	Global Capacity Direct	Security Deposit	\$ 68,000.00
Qwest	Global Capacity Direct	MK 8074103 Deposit Comcast Cable	\$ 1,600.00
Comed	Global Capacity Direct	Comed Security Deposit	\$ 221.67
Comed	Global Capacity Direct	Comed Security Deposit	\$ 1,955.00
Comed	Global Capacity Direct	Comed Security Deposit	\$ 443.58
Windstream	Global Capacity Direct	Security Deposit Requirement	\$ 21,759.53
NTS Communication	Global Capacity Direct	DSL Deposit Inv 061809	\$ 2,750.00
Century Tel	Global Capacity Direct	DSL Deposit requirement	\$ 25.00
Verizon	Global Capacity Direct	DSL Deposit Request	\$ 255.00
France Telecom	Global Capacity Direct	Cerner Security Deposit	\$ 13,580.02
SFR	Global Capacity Direct	SFR	\$ 10,428.28
Claro Deposit (Customer: Telus)	Global Capacity Direct	2x's MRC Carrier Deposits	\$ 17,300.00
	Total		\$ 183,438.08

Vendor Prepayments	GC Entity	Description	Amount
n/a	Centrepath	Customer: COC	\$ 153.61
Nortel	Centrepath	Inv #1935154; Customer: HUP	\$ 6,476.67
Pics	Centrepath	Inv #154012-12; Customer: Hannaford Snet	\$ 700.00
Wiltel - Level 3	Centrepath	Inv #14554089; Customer:	\$ 4,705.56
Wiltel - Level 3	Centrepath	Inv #14256573; Customer: Bayer	\$ 1,050.00
Wiltel - Level 3	Centrepath	Inv #13995188; Customer: CHOP	\$ 933.33
Wiltel - Level 3	Centrepath	INV #SL3610; Customer: Community	\$ -
Wiltel - Level 3	Centrepath	Inv #13598240; Customer: HUP	\$ -
Wiltel - Level 3	Centrepath	Inv# 15976551	14,116.67
Northern/First Funding	Capital Growth Systems	Directors and Officers	\$ 62,604.51
Schwartz Brothers Insurance	Capital Growth Systems	Crime Endorsement	\$ -
Schwartz Brothers Insurance	Capital Growth Systems	Travelers Prop Casualty Inv# 125446	\$ 12,535.13
Schwartz Brothers Insurance	Capital Growth Systems	Commercial Auto Ins Inv#125444	\$ 655.50
Schwartz Brothers Insurance	Capital Growth Systems	Worker's Compensation Inv# 125447	\$ 7,524.75
Schwartz Brothers Insurance	Capital Growth Systems	Travelers Prop Casualty Inv# 125448	\$ 2,341.88
Schwartz Brothers Insurance	Capital Growth Systems	Errors & Omissions Inv#125449	\$ 15,910.88
Schwartz Brothers Insurance	Capital Growth Systems	Travelers Prop Casualty Inv# 125445	\$ 2,623.13
Aztec America Bank	Capital Growth Systems	Annual Escrow Fee	\$ 208.33
Prepaid Tax Income Tax***	Global Capacity Direct	Tax Accrual	\$ 15,160.00
Valuecom	Global Capacity Direct	6/1/10 - 5/30/11	\$ 4,875.00
Oracle USA, Inc.	Global Capacity Direct	Dec 2009 - Nov 2010	\$ -
Pitney Bowles	Global Capacity Direct	MapMarker software Annual	\$ 4,285.42
Microsoft Corp	Global Capacity Direct	Map Point Software Annual	\$ 666.67
Oracle USA, Inc.	Global Capacity Direct	Oracle Support License thru 1/31/2011	\$ 4,261.12
McAfee Virus software	Global Capacity Direct	2/1/2010 - 1/31/2012	\$ 2,185.07
CSC invoice	Global Capacity Direct	Feb 2010 - Jan 2011	\$ 755.00
Center for Communications Mgmt July 2010 - June 2011 invoice	Global Capacity Direct	Semi Annual 6/30/2010 - 12/31/2010	\$ 1,916.25
First Hand Foundation	Global Capacity Direct	Golf Tournament Charity Support of Cerner COS (tournament occurs in May)	\$ 4,050.00

Vendor Prepayments	GC Entity	Description	Amount
Georesults	Global Capacity Direct	August - Dec 31 2010	\$ 3,645.83
Pitney Bowles credit corp	Global Capacity Direct	October through December Rent	\$ 444.88
Regulatory Tax Consultants	Global Capacity Direct	Set up fee	\$ 3,333.33
Regulatory Tax Consultants	Global Capacity Direct	Dec Invoice	\$ 6,000.00
Ntirety	Global Capacity Direct	Remote DB Maint - Oct - Dec	\$ 2,000.00
Center for Communications Mgmt July 2010 - June 2011 invoice	Global Capacity Direct	Semi Annual 12/31/2010 - 6/30/2011	\$ 11,497.50
Oracle USA, Inc.	Global Capacity Direct	Dec 2010 - Nov 2011	\$ 88,768.73
Glastonbury Rent	Global Capacity Direct	Glastonbury Dec Rent	\$ 5,621.52
Orbitz	Global Capacity Direct	01.12.2010	\$ 40,113.33
Thus - M4525	Magenta		\$ 1,116.48
Maporama - M4524	Magenta		\$ 8,373.56
Nildram - M4523	Magenta		\$ 46.52
BT - M4479	Magenta		\$ 23.26
Sage licence/S&M	Magenta		\$ 4,425.58
BUPA	Magenta		\$ 9,377.46
BUPA fees	Magenta		\$ 1,350.69
Maporama	Magenta		\$ 10,078.00
		Total	\$ 366,911.12

Schedule 2.1(e)

Intellectual Property

Copyrights, Copyright Applications and Copyright Licenses

No registered copyrights exist, however the Grantors routinely designate common law copyright ownership of written materials

Patents, Patent Applications and Patent Licenses

None

Trademarks, Trademark Applications and Trademark Licenses

Centrepath - Registration #3071795

CentrePath (Giant Loop) - Registration #2689084 & #2687210

CentrePath (Magellan) - Registration #29553234

Vanco Direct USA (Universal Access) - Registration #2465030 & #2467115

Intellectual Property

Full IP title of documentation, processes, methods, source code, datasets and databases, or other material pertaining to the support, delivery, research of new data derivatives and system capability/functionality for Global Capacity business and operations which support both Software and Circuit business for quoting, procurement, fulfilment, assurance, billing (finance), that are in both a production and development/research state/status.

The assets include but not limited to:

Lattis

CLM including but not limited to the Ridgian code, GC Price, OMP, all research code and datasets developed by Cornell University for GC.

netVESPA

netIPT

USX

Webquote

UIX/ACC

netDirect

PV+

CIAA

IPServices

Provision

Datawarehouse

GCPT

Sharepoint Sites

KM Matrix

WinCVS
Cerberus
netCool
Provisio
Remedy
Clarify
CCDB
Channel Assignment DB
Monolith
Billstream
Salesforce
UAMap / Mapmarker
Webservices and APIs
SMS gateway
Company related websites
CTM
Solarwinds
Oracle financials
Microsoft Great Plains
Citrix
Nagios
Cacti
PowerControl
 Weblogic
 Corba-COS
TL-1 probe
Crystal reports
LDAP
DNS
DHCP
Active Directory
Hyper-V
Checkpoint firewall
Nokia Firewall
Radius / ACE Security Software
Web servers
 IIS
 Apache
Portico

These being all products and datasets constituting the whole of the IP to Global Capacity's software and network optimisation applications, and operational support systems.

Domain Names

Domain Name	Expiry Date
2020technologies.net	28-Apr-11
20-20technologies.net	28-Apr-11
accesspricing.com	29-Mar-11
accesspricing.net	29-Mar-11
capitalgrowthsystems.com	12-Sep-11
cgsiholdings.com	20-Feb-11
cgsiholdings.net	20-Feb-11
connectivitysi.com	21-Sep-11
connectivitysi.net	21-Sep-11
csgglobal.com	18-Jun-11
csg-global.com	30-Jul-11
csgglobal.net	18-Jun-11
csg-global.net	30-Jul-11
gcprice.co.uk	16-Oct-11
gcprice.com	16-Oct-11
gcprice.eu	31-Oct-11
gcprice.net	16-Oct-11
globalcapacity.co.uk	24-Mar-11
globalcapacity.com	12-Dec-11
global-capacity.com	24-Mar-11
globalcapacity.eu	31-Mar-11
globalcapacity.net	5-Dec-11
globalcapacitycorporate.com	2-Feb-12
globalcapacity-corporate.com	10-Apr-11
globalcapacitycorporate.eu	28-Feb-11
globalcapacitycorporate.net	2-Feb-12
globalcapacitygroup.com	26-Jan-12
globalcapacitygroup.eu	31-Jan-12
globalcapacitygroup.net	26-Jan-12
ivno.co.uk	3-Jan-13
i-vno.co.uk	3-Jan-13
i-vno.com	3-Jan-12
ivno.eu	31-Jan-12
i-vno.eu	31-Jan-12
ivno.net	3-Jan-12
i-vno.net	3-Jan-12
magenta-logic.co.uk	19-Aug-11
magenta-logic.com	10-Jan-12
magentalogic.net	13-Mar-11
magenta-logic.net	13-Mar-11

Domain Name	Expiry Date
magentanetlogic.co.uk	4-Dec-12
magenta-netlogic.co.uk	4-Dec-12
magentanetlogic.com	20-Jun-11
magenta-netlogic.com	4-Dec-11
magenta-netlogic.eu	31-May-11
magentanetlogic.net	20-Jun-11
magentanetsolutions.com	19-May-11
magenta-netsolutions.com	19-May-11
magentanetsolutions.net	19-May-11
magenta-netsolutions.net	19-May-11
magenta-tc.co.uk	18-Jul-11
magenta-tc.com	18-Jul-11
magenta-telecommunication.co.uk	18-Jul-11
magenta-telecommunication.com	18-Jul-11
netipt.com	9-Jul-11
netvespa.co.uk	25-Mar-12
netvespa.com	8-Jul-11
netvespa.net	2-Aug-11
onemarketplaceonline.biz	5-Oct-11
onemarketplaceonline.co.uk	5-Oct-11
onemarketplaceonline.com	5-Oct-11
onemarketplaceonline.eu	31-Oct-11
onemarketplaceonline.net	5-Oct-11
globalcapacity.tel	24-Mar-11
global-capacity.tel	24-Mar-11

Schedule 2.1(g)

Excluded Actions

The right to avoidance actions related to voidable preference payments made by any of Sellers and all proceeds there from, except for avoidance actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business or the Purchased Assets. No avoidance actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Seller, as all such actions are included in the Purchased Assets, and Seller shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer's written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv).

See also Schedule 2.2(f)

Schedule 2.2(e)

Excluded Assets

Customer Contracts not being Assumed

CUSTOMER / CONTRACTING PARTY	CONTRACT
Greymane Connections Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Golibart Marketing, LTD.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
EOG Resources, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Source Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Commercial State Bank	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Industry State Bank	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
First National Bank of Bellville	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Secure Cash Networks	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Splice Telecom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
T-Netix Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Talent Tree, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

Vendor Contracts not being Assumed

VENDOR / CONTRACTING PARTY	CONTRACT
ABN AMRO	Agreement of Sublease
Augury	Master Services Agreement and related Statements of Work
Belgacom	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
British Telecommunications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
CarrierCom LP	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
C2C Fiber of Massachusetts, LLC (OnFiber)(Qwest)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
C3 Communications, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Calpoint, LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cambrian Communications, LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Capital Telecommunications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cliff Bosely	Independent Marketing/Agent Agreement
CoreExpress, Inc. (Williams)(Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cogent account GLOBALCA00008 only	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Consolidated Communication Telecom Services	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
CTSI, LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
EPIK Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Fiber Technologies Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Fiberdyne Labs Inc	Master Consulting Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
FIBERSYSTEMS	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
GlassHouse Technologies	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Grande Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
GTE Telecom Incorporated (Verizon)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
ICG Communications (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
ITS Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Looking Glass Networks, Inc. (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Mergent Investor Relations Services	Services Agreement
Netwolves	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
One Seven LLC	Consulting Services/Contractor Agreement
Optelcon	Consulting Services/Contractor Agreement
Orbitz LLC	Agreement of Sublease
PaceTel, Inc.	Consulting Services/Contractor Agreement
SDN Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Shareholder.com	Subscriber Agreement
Sigma Networks, Inc	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Southern California Edison Company	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Sphera Optical Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Starvox	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Storm Telecommunications Limited	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
TDS Telecom	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Time Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Triad Communications Group	Subcontractor Consulting Agreement
Verio, Inc.	NTT Verio Agent Agreement
VTX/Grande River	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
David Bernahl	Independent Marketing Representative/Agent Agreement
Telemetry Communications, Inc	Independent Marketing Representative/Agent Agreement
Thomas Hudson	Business Referral Agreement
Aequitas Capital Management, Inc	Advisory Services Agreement and related Amendments
Capstone Investments	Investment Banking Services Agreement and related Amendments
National Securities Corporation	Financial Advisory Agreement
Salzwedel Fianancial Communications	Independent Consulting and Services Agreement
Verizon	Commitment Discount Plan and related Amendments
Fragomen, Del Rey	Engagement as Special Counsel

Schedule 2.2(f)

Retained Causes of Action

- 1) Any and all claims arising under chapter 5 of the Bankruptcy Code and all similar actions under applicable law, including, but not limited to, preferences under Section 547 of the Bankruptcy Code, turnover Claims arising under Sections 542 or 543 of the Bankruptcy Code, and fraudulent transfers under Section 548 of the Bankruptcy Code (“Avoidance Actions”) and all proceeds there from, except for Avoidance Actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business, and designated by Buyer prior to the Closing. No Avoidance Actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer’s written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv).
- 2) Objections to Claims and Interests under the Plan, including any equitable subordination claims arising under Section 510 of the Bankruptcy Code or other applicable law (“Claim Objections”), provided that (A) Sellers are retaining solely for purposes of offset against Claims and Interests any other litigation, claims or Causes of Action, whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtors’ businesses, assets or operations or otherwise affecting the Debtors, including, without limitation, possible claims or Causes of Action against the following types of parties for the following types of claims: Possible claims against vendors, customers or suppliers for warranty, indemnity, back charge, set-off issues, overpayment or duplicate payment issues and collections, accounts receivables matters; Possible claims against utilities or other persons or parties for wrongful or improper termination of services to the Debtors; Possible claims for any breaches or defaults arising from the failure of any persons or parties to fully perform under contracts with the Debtors before the assumption or rejection of the subject contracts; Mechanic’s lien claims of the Debtors; Possible claims for deposits or other amounts owed by any Creditor, lessor, utility, supplier, vendor, factor or other person; Possible claims for damages or other relief against any party arising out of environmental, asbestos and product liability matters; Actions against insurance carriers relating to coverage, indemnity or other matters; Counterclaims and defenses relating to notes or other obligations; Possible claims against local, state and federal taxing authorities (including, without limitation, any claims for refunds of overpayments); Contract, tort, or equitable claims which may exist or subsequently arise; and (B) all such Claim Objections against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business or the Purchased Assets, and designated by Buyer prior to the Closing. No Claim Objections against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer’s written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv). For the avoidance of doubt, Buyers are acquiring as Purchased Assets and may determine to pursue or not in the ordinary course of business all such possible claims and Causes of Action.

- 3) Any claims of the Debtors arising under Section 362 of the Bankruptcy Code for violations of the automatic stay.

Schedule 2.3(c)

Prepetition Cure Amounts and Payment Schedule

Vendor Entity	Settlement Type	Total Pre-petition Cure Amount
AT&T - Undisputed	Settlement per separate order	\$ 4,226,777.00
AT&T - Dispute Settlement	Settlement per separate order	\$ 433,000.00
Verizon	Settlement per separate order	\$ 1,625,765.82
Level 3	Settlement per separate order	\$ 805,794.88
WILTEL	Settlement per Docket 369	\$ 56,431.83
Qwest	Settlement per separate order	\$ 718,976.05
BCE Nexxia	Settlement per separate order	\$ 71,495.42
AboveNet	Settlement per separate order	\$ 26,079.38
Time Warner Cable	Settlement per Docket 369	\$ 29,188.01
COX Communications	Settlement per Docket 369	\$ 18,259.77
Electric Lightwave, Inc.	Settlement per Docket 369	\$ 17,681.92
Cavalier Telephone (Intellifiber Networks)	Settlement per Docket 369	\$ 8,361.16
FastTrack Communications, Inc.	Settlement per Docket 369	\$ 5,229.53
Metcom Network Services, Inc.	Settlement per Docket 369	\$ 4,060.48
Geneseo Telephone Co.	Settlement per Docket 369	\$ 2,148.48
XO Communications Inc.	Settlement per Docket 369	\$ 212,026.01
Frontier	Settlement per Docket 369	\$ 201,252.65
Cogent Communications	Settlement per Docket 369	\$ 106,812.42
Reliance Globalcom (fka Yipes Enterprise Service)	Settlement per separate order	\$ 104,273.85
Global Crossing	Settlement per Docket 369	\$ 97,776.76
Zayo	Settlement per Docket 369	\$ 76,774.15
Navega	Settlement per Docket 369	\$ 71,251.61
CenturyTel Fiber Company II,LLC	Settlement per Docket 369	\$ 65,908.83
IPC Network Services, Inc. (fka Westcom)	Settlement per Docket 369	\$ 42,314.52
Ygnition Networks, Inc.	Settlement per Docket 369	\$ 39,217.67
RCN Communications	Settlement per Docket 369	\$ 37,824.57
Interfacing Company of TX	Settlement per Docket 369	\$ 34,875.00
Telus Communications Inc.	Settlement per Docket 369	\$ 31,121.33
Core 180, Inc.	Settlement per Docket 369	\$ 29,214.00
Mid-Atlantic Broadband Cooperative	Settlement per Docket 369	\$ 26,066.77
SUNESYS	Settlement per Docket 369	\$ 25,000.00
Paetec	Settlement per Docket 369	\$ 19,685.38
Optimum Lightpath, Inc. - Cablevision	Settlement per Docket 369	\$ 18,731.19

Vendor Entity	Settlement Type	Total Pre-petition Cure Amount
Virtela	Settlement per Docket 369	\$ 17,144.39
Teleglobe USA Inc. (TATA)	Settlement per Docket 369	\$ 16,200.00
FWR Communication Networks, Inc.	Settlement per Docket 369	\$ 11,118.00
Innercity Fibernet, LLC	Settlement per Docket 369	\$ 9,900.00
Eventis Telecom	Settlement per Docket 369	\$ 9,750.00
Verosity Technology Partners	Settlement per Docket 369	\$ 7,790.32
MBO Video LLC	Settlement per Docket 369	\$ 6,695.94
NTS Communications	Settlement per Docket 369	\$ 6,364.52
Granite Telecom	Settlement per Docket 369	\$ 6,158.71
Virtustream	Settlement per Docket 369	\$ 4,915.32
Shaw Business Solutions	Settlement per Docket 369	\$ 3,358.09
Comcast	Settlement per Docket 369	\$ 1,724.96
One Communications-Connecticut Telephone	Settlement per Docket 369	\$ 1,696.41
Cincinnati Bell Telephone Company LLC.	Settlement per Docket 369	\$ 1,352.42
SureWest	Settlement per Docket 369	\$ 933.90
Lipan Telephone Co	Settlement per Docket 369	\$ 225.83
Chillicothe Telephone Company	Settlement per Docket 369	\$ 122.70
CableOne, Inc.	Settlement per Docket 369	\$ 870.80
FirstDigital Telecom	Settlement per Docket 369	\$ 510.97
GTA	Settlement per Docket 369	\$ 210.29
BUCKEYE TELESYSTEM TELEPHONE	Settlement per Docket 369	\$ 52.06
SERVICE ELECTRIC CABLE TV	Settlement per Docket 369	\$ 42.55
MIDCONTINENT COMMUNICATIONS (DSL)	Settlement per Docket 369	\$ 29.58
Lighttower Fiber Networks	Settlement per Docket 369	\$ 2,945.16
Cable & Wireless Worldwide	Settlement per Docket 369	\$ 2,572.93
Insight	Settlement per Docket 369	\$ 22,469.46
SFR (France)	Settlement per Docket 369	\$ 9,356.01
Internap Network Services Corporation	Settlement per Docket 369	\$ 9,173.65
Interstate FiberNet Inc.	Settlement per Docket 369	\$ 3,703.43
Alpheus Communications, LP	Settlement per Docket 369	\$ 4,342.52
Windstream Communications	Settlement per Docket 369	\$ 588.22
Sprint	Settlement per Docket 369	\$ 50,725.15
Time Warner Telecom	Settlement per Docket 369	\$ 27,108.32
IRIS Networks	Settlement per Docket 369	\$ 8,516.13
US Signal	Settlement per Docket 369	\$ 5,971.69
Allied Communications, Inc.	Settlement per Docket 369	\$ 2,465.14
		\$ 9,546,482.03

Prepetition Executory Cure Amounts

Non-Real Estate Cure Schedule		
GC Entity	Vendor Name (or Contracting Party)	Cure Amount
2020 Technologies, Inc.	Geckotech	\$ 12,056.42
Centrepath	Colospace, Inc.	\$ 41,135.48
Centrepath	Continental Resources	\$ 1,051.49
Centrepath	TRS REN TELCO	\$ 1,518.37
Global Capacity Direct, LLC	Data Direct Technologies	\$ 1,470.00
Global Capacity Direct, LLC	Equinix, Inc.	\$ 12,740.30
Global Capacity Direct, LLC	Ntirety, Inc.	\$ 7,419.35
Global Capacity Group, Inc.	Geckotech	\$ 47.95
Global Capacity Group, Inc.	Klotron, Inc.	\$ 1,825.00
Global Capacity Group, Inc.	Regulatory and Tax Consultant, LLC	\$ 10,825.38
		\$ 90,089.74
Real Estate Cure Schedule - Schedule 2.3(c)		
GC Entity	Vendor Name (or Contracting Party)	Cure Amount
Centrepath	265 WINTER Street LLC	\$ 28,064.92
Centrepath	HOBBS BROOK MAN	\$ 633.76
Global Capacity Direct, LLC	G&L Glastonbury, LLC	\$ 4,155.53
		\$ 32,854.21
Total Executory Cures		\$ 122,943.95

*Cure language from Docket 369 is as follows: 100% of adequate assurance deposit applied to prepetition amount and amount of current monthly run-rate termed out over one-year with the balance settled upon exit.

**See also Assumed Liabilities in Schedule 5.13

Schedule 5.1

Organization

<u>Name of Grantor</u>	<u>Type of Organization (e.g. corporation, limited liability company, limited partnership)</u>	<u>Jurisdiction of Organization/Formation</u>	<u>Organizational Identification Number</u>
Capital Growth Systems, Inc.	Corporation	Florida	P99000086201
20/20 Technologies I, LLC	Limited Liability Company	Delaware	3617772
20/20 Technologies, Inc.	Corporation	Delaware	3852159
FNS 2007, Inc.	Corporation	Delaware	2311907
CentrePath, Inc.	Corporation	Delaware	3189723
Global Capacity Group, Inc.	Corporation	Texas	800036361
Magenta netlogic Limited	Corporation	UK	3534658
Nexvu Technologies, LLC	Limited Liability Company	Delaware	3497230
Capital Growth Acquisition, Inc.	Corporation	Delaware	4557281
Global Capacity Direct, LLC, f/k/a Vanco Direct USA, LLC	Limited Liability Company	Delaware	3922006
Global Capacity Holdco, LLC	Limited Liability Company	Delaware	4822597

Also see Schedule 11.1(h)(i) and 11.1(h)(ii) for list of State Jurisdictions by Entity

Schedule 5.3(a)

Conflicts

All contracts containing events of default for non-payment will be cured by Schedule 2.3(c) or due to bankruptcy which will be remedied by the Sale Order.

Schedule 5.3(b)

Required Consents

Transfer of Telecommunication Assets will require the necessary FCC and State regulatory approval as stated in Schedule 11.1(h)(ii).

Consents will need to be obtained related to the following contracts for Magenta netLogic, Ltd.

Salford University Enterprises
Virtela Communications
T-Systems
Marionette Ltd. f/k/a BP Insurance
COLT Telecommunications
Pro-Preis
Hopeweiser
Maporama
Informi GIS
Prosoft
Thus
Trident Payroll Services
Georeults

Schedule 5.5(c)

Real Property Leases – Non Monetary Defaults

Termination Letter for legacy space at 399 Wall Street, Unit B, Glendale Heights, IL related to the divested Frontrunner business was delivered to landlord on February 17, 2010. Terms of the early termination clause in the lease state that an early termination payment of \$27,000 was to be paid by July 15, 2010 and currently remains unpaid. No cure amount for this lease is reflected on Schedule 2.3(c) since Seller does not wish to retain the space and has delivered the notice of termination.

Schedule 5.5(f)

Real Property Unrelated to Business

None.

Schedule 5.6(a)

Intellectual Property Limitations

Three-Party Escrow Service Agreement with Iron Mountain for the Source Code of the related Intellectual Property of the business where the beneficiary was ACF CGS, LLC followed by Pivotal Global Capacity, LLC needs to be terminated now that the related loan has been paid in full.

See Customer License Agreements on Schedule 2.1(c)(i)

Three-Party Escrow Service Agreement with Iron Mountain and Comtel Assets, LP d/b/a Excel Telecommunications for the Escrow of the underlying circuit LOAs (Letters of Authorization) related to the installed base of circuits for Excel.

Strict Joint Order Escrow Trust and Agreement with Chicago Title Insurance Company and Comcast Corporate for the Escrow of the underlying circuit LOAs related to the installed base of circuits for Comcast.

Schedule 5.6(b)

Intellectual Property Grants

See Customer License Agreements on Schedule 2.1(c)(i)

Schedule 5.6(c)

Intellectual Property Rights Exclusions

Licensed Software in use in conjunction with the Seller's Intellectual Property is subject to the individual Terms and Conditions of their respective licenses.

Schedule 5.7(b)

Contracts – Breach or Defaults

With the exception of Change of Control contemplated by this Agreement, the filing for Bankruptcy and payment defaults, no other Contract Breaches or Defaults exist.

Schedule 5.7(c)

Contracts – Non-Monetary Defaults

See Schedule 5.7(b)

Schedule 5.8(a)

Employee Plans

Medical – Blue Cross Blue Shield of IL and MA

- Blue Choice Plan 72322
- BluePrint HMO Plan B011
- BluePrint PPO Plan 11112
- HMO Blue New England Enhanced
- Blue Care Elect Value Plus

Dental – MetLife

- 20/20 Technologies
- Centrepath
- Global Capacity Group
- Vanco

Vision – Beneficial Administration Co.

- 20/20 Technologies
- Centrepath
- Global Capacity Group
- Vanco Direct

STD/LTD – MetLife

- MetLife LTD Insurance
- MetLife STD Insurance

Basic Life/AD&D – MetLife

Voluntary Life/AD&D – MetLife

Spouse Life/AD&D – MetLife

Child Life – MetLife

Schedule 5.8(b)

Employee Plan Liabilities

None.

Schedule 5.9

Legal Proceedings

Vanco U S LLC vs Global Capacity US BC District of Delaware Case No 10-12302 Adv Proc No 10-53164

Schedule 5.10

Finders

None.

Schedule 5.12

Unfiled SEC Reports

As reported on Form 8-k on June 8, 2009:

On June 2, 2009, Capital Growth Systems, Inc.'s (the "Company") Board of Directors, voting together with a majority of the Company's Audit Committee members, ended its engagement of BDO Seidman, LLP ("BDO"), due to BDO's proposed timing of completion of the audit and its proposed fees associated therewith for the year ended December 31, 2008 (the "2008 Audit").

The Company engaged BDO on February 27, 2009 as its independent registered public accounting firm. During BDO's period of engagement, an issue was raised and discussed by certain of the members of the Board of Directors (but not the full Board or the full Audit Committee) and BDO regarding the Company's accounting treatment for a complex issue associated with the valuation methodology applied to certain embedded derivative features of certain debt instruments issued by the Company during 2007 and 2008 (the "Valuation Issue"). The Company's debt instruments are described more fully in its Current Report on Form 8-K filed with the SEC on November 20, 2008. The Valuation Issue does not impact cash of the Company and the Company is prepared to file its 2008 Form 10-K pending resolution of the appropriate methodology to be applied and certain other minor issues. The Company is unable to complete its 2008 Audit and therefore cannot file its 2008 Form 10-K until the Valuation Issue has been resolved. Resolution of the Valuation Issue could impact the Company's 2007 Form 10-K/A if the treatment results in a material change to the liabilities for warrants to purchase common stock and embedded derivatives of convertible debt instruments and preferred stock, as displayed therein. It should be noted that all of the applicable debt instruments that were issued in 2007 have since been either paid off or converted to Common Stock (with certain of the detached warrants still outstanding).

Subject to the disclosure regarding the Valuation Issue set forth above, during the Company's two most recent fiscal years ended December 31, 2008 and 2007 and through June 3, 2009 (the "Covered Period"), there were no disagreements with BDO on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of BDO, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report.

Schedule 5.13

Business Liabilities

Liabilities of Magenta netLogic as of December 31, 2010:

- Note Outstanding to Nigel Meacham - £3,335.21 or \$5,159.57 as converted
- Note Outstanding to Andrew Berquist - £9,589.51 or \$14,834.97 as converted

Schedule 5.15(b)

Satisfaction of Claims

None.

Schedule 5.15(d)

Encumbrances on Purchased Assets

None.

Schedule 5.15(h)

Transactions and Commitments Not in the Ordinary Course of Business

None.

Schedule 5.15(i)

Employee Agreements

The following employees have some form of U.S. based Employment Agreement with the Seller:

Patrick C. Shutt
George A. King
John P. Lodge, Jr.
Daniel Kardatzke

The following employees have some form of U.K. based Employment Agreement with the Seller:

Nigel Meacham
Phil Doyle
Elisabeth Simao
Andrew Berquist

The following employees have terms of Severance that were included in their original Offer Letter:

Michaela DiDonna

Schedule 5.17

Tax Matters

GC Entity	Priority Tax Liability	Cure Amount	
Global Capacity Group, Inc.	Q1 2010 Franchise Tax Accrual	\$ 12,500	
Global Capacity Group, Inc.	Q2 2010 Franchise Tax Accrual	\$ 12,500	
Global Capacity Group, Inc.	Penalties and Interest due to IRS for 2007 Withholding	\$ 75,408	
Global Capacity Direct, LLC	City of Chicago Telecom Tax Liability	\$ 209,939	(1)
Global Capacity Direct, LLC	Penalties and Interest for City of Chicago Telecom Tax	\$ 62,504	
Global Capacity Direct, LLC	Deferred Corporate Federal Income Tax Liabilities	\$ 49,000	
Global Capacity Direct, LLC	Deferred Corporate State Income Tax Liabilities	\$ 44,800	
Global Capacity Direct, LLC	Prepetition amounts due for Sales & Use Tax	\$ 211,507	
Global Capacity Direct, LLC	Federal TRS Fund	\$ 27,490	
		\$ 705,648	

(1) Have offsetting amount in A/R for amounts being passed through to customers

Schedule 5.18

Labor Matters

None.

Schedule 5.19(a)

Employees

Sellers to provide separately to Buyer

Schedule 5.19(b)

Independent Contractors

Contractor	Payment Structure	Description of Job or Projects Currently in Progress
UHK Optical - Shazi Habib	\$65/hour	Revenue and Service Delivery for Engineering Services related to AT&T
Augury Network Advisors - Brian Begely	\$24/hour	Pricing, Revenue and Service Delivery for Network Solutions
Augury Network Advisors - James Fitzgerald	\$65/hour	Pricing, Revenue and Service Delivery for Network Solutions
Addison Search - Cheryl Woods	\$43.60/hour	Revenue Assurance (pending Razorsite go-live)
Michael Page - Carmen Nunez	\$36.75/hour	Great Plains Integration
Michael Page - Ashley Crick	\$46.75/hour	Group AR & Billing support
Candelaria Benitez	\$25/hour	Integration
Constance Cucchiara-Bacchus	\$40/hour	Bankruptcy Cost Reduction & Human Resources
George O'loughlin	\$15/hour	Bankruptcy Compliance/Contract Abstracts
Law Office of Valerie Molinaro	\$100/hour	Outsourced Legal
Tanya Piletich	\$25/hour	GC International/Client Projects
Jonathan Wynne Evans	\$100/hour	Outsourced Legal (UK)
Ricardo Cunha	Commission Only	

Schedule 5.19(c)

Employment Limitations

Jonathan Wynne Evans has a Consulting Agreement with Capital Growth Systems, Inc. that calls for twelve month notice prior to termination of services.

Schedule 5.20

**Twenty Largest Customers and Critical Suppliers (excluding rents, benefits and professionals)
based on recent twelve month volume of sales and purchases compared to previous twelve month
history**

Twenty Largest Customers

Customer	Recent Twelve Months Ending 11/30/10	Prior Twelve Months Ending 11/30/09
Cerner	\$12,700,000	\$7,000,000
Comcast	\$3,900,000	\$4,000,000
Megapath	\$3,800,000	\$3,000,000
Excel	\$3,600,000	\$6,700,000
Bell Canada	\$3,500,000	\$5,200,000
TWC	\$2,000,000	\$3,200,000
AT&T	\$2,000,000	\$2,000,000
Telus	\$1,800,000	\$2,600,000
Verizon	\$1,500,000	\$4,400,000
Georgia Public Web, Inc	\$1,400,000	\$600,000
Time Warner Telecom	\$1,300,000	\$1,900,000
US Oncology	\$1,200,000	\$1,400,000
IBM	\$1,000,000	\$1,100,000
Virtela	\$900,000	\$1,000,000
Citizen's Telephone	\$700,000	\$800,000
Tata/Teleglobe	\$600,000	\$1,000,000
Reliance Globalcom	\$600,000	\$600,000
GMAC	\$600,000	\$1,800,000
AboveNet Communications	\$500,000	\$900,000
XO Communications	\$500,000	\$300,000

Twenty Largest Critical Suppliers

Vendor	Recent Twelve Months Ending 11/30/10	Prior Twelve Months Ending 11/30/09
AT&T	\$12,400,000	\$10,400,000
Verizon	\$7,400,000	\$6,000,000
Qwest	\$7,000,000	\$8,000,000
Level 3	\$3,000,000	\$4,800,000
XO Communications	\$1,400,000	\$1,600,000
ITS Direct	\$800,000	\$1,100,000
Global Crossing	\$600,000	\$800,000
Sprint	\$600,000	\$900,000
Time Warner Telecom	\$500,000	\$600,000
Cogent	\$400,000	\$800,000
Navega	\$300,000	\$100,000
Ygnition Networks, Inc.	\$200,000	\$300,000
Fibernet	\$200,000	\$200,000
Colospace	\$200,000	\$300,000
EMBARQ (CenturyTel)	\$200,000	\$200,000
WESTCOM	\$100,000	\$200,000
MBC	\$100,000	\$100,000

Schedule 10.2

Purchase Price Allocation

[To be completed prior to closing]

Schedule 11.1(h)(i)

List of Jurisdictions

Global Capacity Group, Inc.

Alabama	Certificate of Public Convenience and Necessity to Provide Local Exchange Service, Long Distance Interexchange Service and Long Distance Resale Service; Docket No. 30521, granted on October 22, 2007
Arizona	Not Registered
Arkansas	Certificate of Public Convenience and Necessity to Operate as a Reseller of Interexchange Telecommunications Services; Docket No. 08-125-U, granted on September 17, 2008
California	Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunication Services in Decision No. 05-09-055; Application No. 05-07-002; Utility ID No. U-6966-C, granted on September 30, 2005
Colorado	Registration as a Toll Reseller; Granted on August 27, 2008
Connecticut	Not Registered
Delaware	Not Registered
District of Columbia	Not Registered
Florida	Registered as an Intrastate Interexchange Telecommunications Company; Docket No. 080569-TI, granted on August 26, 2008 Certificate to Provide Competitive Local Exchange Telecommunications; Docket No. 080570-TX; Order No. PSC-08-0765-CO-TX, granted on November 18, 2008 (Certificate No. 8740).
Georgia	Certificate of Authority to Resell Interexchange Telecommunications Services; Docket No. 25589, Certificate No. R-1042, granted on December 18, 2007 Certificate of Authority to Provide Competitive Local Exchange Services Docket No. 25590, Certificate No. L-0439 granted on December 18, 2007
Hawaii	Certificate of Authority to Provide Competitive Resold and Facilities-Based/UNE Local Exchange and Interexchange Telecommunications Services within the State of Hawaii; Docket No. 2007-0229; Order No. 24175 granted on May 6, 2008

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Idaho	<p>Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange Telecommunication Services; Case No. GCG-T-07-01; Certificate No. 471; Order No. 30460 granted on November 6, 2007</p> <p>Intrastate Telecommunication Services; Effective July 23, 2007</p>
Illinois	<p>Certificate of Local and Interexchange Authority to Operate as a Resale and Facilities-Based Carrier of Telecommunication Services; Docket No. 08-0489 granted on September 24, 2008</p>
Indiana	<p>Certificate of Territorial Authority as a Toll Reseller, CTA No. 0808-3, effective August 21, 2008</p> <p>Certificate of Territorial Authority to Provide Facilities-Based Local Exchange, Bundled Resale of Local Exchange and Caller ID Services in Cause No. 43559 granted on October 8, 2008</p>
Iowa	<p>Certificate of Public Convenience and Necessity to Provide Local Exchange Service in Docket Nos. TCU-07-3 and WRU-07-17-3889 granted on September 5, 2007</p> <p>Telecommunication Service Provider; Granted on July 13, 2007</p>
Kansas	<p>Certificate of Convenience and Authority to Provide Switched Local Exchange and Exchange Access Services; Docket No. 09-GCGT-216-COC granted on September 17, 2009</p> <p>Certificate of Convenience and Authority to Provide Interexchange Services; Docket No. 09-GCGT-217-COC (Telecom-IXC) granted on September 17, 2008</p>
Kentucky	<p>Authority to Operate as a Long Distance Reseller (Filing ID No. TFS2007-00538) and Competitive Local Exchange Provider (Filing ID No. TFS2007-00537) granted on July 13, 2007</p>
Louisiana	<p>Certificate of Public Convenience and Necessity to Operate as a Reseller and Facilities Based/UNE Provider of Competitive Local Exchange and Interexchange Services in Docket No. S-30725 granted February 1, 2010</p>

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Maine	Authority to Provide UNE-P Replacement (i.e., Wholesale Advantage) Facilities-Based and Resold Competitive Local Exchange Service in the Service Area of Verizon-Maine and Intrastate Interexchange Service; Docket No. 2007-343 granted on September 12, 2007
Maryland	Not Registered
Massachusetts	Statement of Business Operations for Telecommunications Common Carriers Other than Pay-Telephone Provider; Granted on September 27, 2008
Michigan	Provide Basic Local Exchange Service; Case No. U-15379 effective November 8, 2007 Self registration as an Intrastate Telecommunications Service Provider (ITSP) providing Interexchange and Toll Resale Services granted on July 20, 2007
Minnesota	Not Registered
Mississippi	Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based/UNE Local Exchange & Interexchange Telecommunications Services; Docket No. 2007-UA-387 granted on June 8, 2008
Missouri	Not Registered
Montana	Registered as a Telecommunications Carrier and Service Provider. Last updated April 26, 2010. Not registered as a Service Provider.
Nebraska	Authority to Operate as a Reseller and Facilities-Based/UNE Common Carrier of Local Exchange and Interexchange Telecommunication Services; Application No. C-3840 granted on September 18, 2007
Nevada	Authority to Operate as a Competitive Supplier of Telecommunication Services; Docket No. 08-08022; CPC 2917 granted on December 17, 2008

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

New Hampshire	Authorization to Provide IntraLATA Toll Service in Authorization No. IXC 08-009-07 granted on August 29, 2007 Authorization to Provide Local Exchange Service in Authorization No. C08-008-07 granted on August 29, 2007
New Jersey	Authorized Resale Carrier; Granted on August 20, 2008 Authority to Provide Resold and Facilities-Based Unbundled Network Element Local Exchange Telecommunications Services; Docket No. TE08100934 granted on January 28, 2009
New Mexico	Certificate of Registration to Provide Competitive Local Exchange Telecommunications Services granted on October 16, 2007 Certificate of Registration to Provide Intrastate Long Distance Telecommunications Services granted on August 24, 2007
New York	Certificate of Public Convenience and Necessity for Authority to Provide all Forms of Intrastate Interexchange and Local Exchange Telecommunications Services Within New York State; Case No 08-C-0940 granted on November 15, 2008
North Carolina	Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Interexchange Telephone Service; Docket No. P-1466, Sub 0 granted on August 27, 2008 Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Local Exchange and Exchange Access Telephone Service in Docket No. P-1466, Sub 1 granted on October 30, 2008
North Dakota	Registered as an Interexchange and Local Service Provider; Effective July 20, 2007
Ohio	Not Registered
Oklahoma	Not Registered

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Oregon	Certificate of Authority to Provide Telecommunications Services and Classification as a Competitive Provider; Docket No. CP 1427; Order No. 08-482 granted on September 24, 2008
Pennsylvania	Competitive Local Exchange Carrier; Docket No. A-311446-F0002 and a Reseller Interexchange Carrier; Docket No. A-311446 granted on July 30, 2008
Rhode Island	Authority to Provide Local Telecommunications Services; Docket No. 3853 granted on August 22, 2007 (Certification allows Interexchange Capabilities)
South Carolina	Not Registered
South Dakota	Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services; Docket No. TC07-083 granted on September 26, 2007
Tennessee	Not Registered
Texas	Registered to Provide Interexchange Services; Certificate No. IX040017 granted April 21, 2004
Utah	Reseller of Long Distance Service; Granted on August 27, 2008
Vermont	Certificate of Public Good to Operate as a Provider of Telecommunications Services Including Service to the Local Exchange; Docket No. CPG No. 864-CR granted on August 28, 2007
Virginia	Not Registered
Washington	Registration as a Competitive Telecommunications Company; Docket No. UT-081502 granted on September 13, 2008
West Virginia	Provide Resold and Facilities-Based/UNE Local Exchange and Resold Interexchange Telecommunications Service throughout West Virginia; Case No. 07-1307-T-CN granted on October 2, 2007

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Wisconsin	Certification as a Competitive Local Exchange Carrier and Alternate Telecommunications Utility; Docket No. 2281-NC-100 granted on August 3, 2007
Wyoming	Certificate of Public Convenience and Necessity to Offer and Provide Local Exchange Telecommunication Services in Docket No. 70125-1-TA-07 (Record No. 11354) granted on October 9, 2007 Interexchange Carrier Reseller; Docket No. 74673 granted on November 21, 2007

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Alabama	Certificate of Public Convenience and Necessity to Provide Local Exchange Service, Long Distance Resale Service and Resold Private Line Data Service; Docket No. 29778 granted on November 28, 2006
Arizona	Not Registered
Arkansas	Certificate of Public Convenience and Necessity to Provide Services as a Competing Local Exchange Carrier; Docket No. 05-100-U granted on October 23, 2007
California	Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunication Services; Decision No. 05-10-019; Application No. 05-07-004; Utility ID No. U-6969-C granted on October 11, 2005 Certificate of Public Convenience and Necessity to Offer Resold Local Exchange Telephone Services; Decision No. 5-11-008; Application No. 05-07-005 granted on November 18, 2005
Colorado	Not Registered
Connecticut	Certificate of Public Convenience and Necessity to Operate as a Reseller of Local Exchange and Intrastate Interexchange Telecommunications Services; Docket No. 05-08-06 granted on October 26, 2005

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Delaware	Certificate of Public Convenience and Necessity to Provide Local Exchange and Competitive Intrastate Telecommunications Services; Docket No. 05-388 granted on April 11, 2006
District of Columbia	Not Registered
Florida	Certificate to Provide Competitive Local Exchange Telecommunications Service; Docket No. 100273-TX granted on August 17, 2010 (Certificate No. 8792) Registration as Intrastate Interexchange Telecommunications; Docket No. 100291-TI granted on June 16, 2010
Georgia	Certificate of Authority to Resell Interexchange Telecommunications Services; Docket No. 20950 granted on June 22, 2005
Hawaii	Not Registered
Idaho	Not Registered
Illinois	Certificate of Authority to Provide Resold Local and Interexchange Telecommunications Services; Docket No. 05-0408 granted on September 28, 2005
Indiana	Certificate of Public Convenience and Necessity to Resell Local Exchange Telecommunication Services; Cause No. 42900 granted on October 26, 2005 Certificate of Territorial Authority to Resell Wide Area Telephone Service and/or Interexchange Intrastate Telecommunication Services; Cause No. 0508-2 granted on August 24, 2005
Iowa	Not Registered
Kansas	Not Registered

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Kentucky	Authority to Operate as a Long Distance Reseller (Filing ID No. TFS2005-00890) and Competitive Local Exchange Provider (Filing ID No. TFS2005-00889) granted on July 18, 2005
Louisiana	Authority to Operate as a Provider of CLEC and Long Distance Services; Docket No. S-28994 granted on January 17, 2006
Maine	Authority to Provide Local Exchange Service as a Reseller and Interexchange Service as a Reseller; Docket No. 2006-553 granted on November 7, 2006
Maryland	Authority to Provide Resold Local Exchange and Interexchange Telecommunications Services; Mail Log Nos. 97828, 98029 and 98141, TE-8114 granted on August 3, 2005
Massachusetts	Statement of Business Operations granted on August 3, 2005
Michigan	Not Registered
Minnesota	Not Registered
Mississippi	Certificate of Public Convenience and Necessity to Operate as a Long Distance and Local Exchange Telecommunications Provider in the State of Mississippi; Docket No. 2005-UA-0629 granted on June 6, 2006
Missouri	Not Registered
Montana	Registered Telecommunications Carrier granted on June 27, 2005 and updated June 18, 2010. Not registered as a Service Provider.
Nebraska	Authority to Operate as a Resale Carrier of Intrastate Interexchange and Local Exchange Telecommunication Services Cancelled Prior to Vanco Acquisition

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Nevada	Certificate of Public Convenience and Necessity Authorizing it to Operate as a Competitive Provider of Telecommunications Services providing Resold Intraexchange Services; Docket No. 05-6033 (CPC No. 2832) granted on August 24, 2005
New Hampshire	Authorization to Provide IntraLATA Toll Service; Authorization No. IXC 08-016-05 granted on September 1, 2005 Authorization to Provide Local Exchange Service; Authorization No. C08-008-05 granted on August 8, 2005
New Jersey	Authorized Resale Carrier; Granted on April 19, 2010
New Mexico	Certificate of Registration to Provide Intrastate Long Distance Telecommunications Services; Granted on September 2, 2005
New York	Certificate of Public Convenience and Necessity to Operate as a Reseller of Telephone Service; Case No. 05-C-0780 granted on July 12, 2005
North Carolina	Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Interexchange Telephone Service; Docket No. P-1364, Sub 0 granted on June 23, 2005 Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Local Exchange and Exchange Access Telephone Service; Docket No. P-1364, Sub 1 granted on September 16, 2005
North Dakota	Not Registered
Ohio	Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Services; Case No. 05-943-TP-ACE; Certificate No. 90-933 granted on August 31, 2005
Oklahoma	Not Registered

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Oregon	Certificate of Authority to Provide Telecommunications Services and Classification as a Competitive Provider; CP No. 1294; Order No. 05-962 granted on August 25, 2005
Pennsylvania	Certificate of Public Convenience to Operate as a Competitive Access Provider; Docket No. A-311393 granted on March 2, 2006
Rhode Island	Certificate of Authority to Operate as a Competitive Switchless Reseller; Docket No. 2262 (G20) granted on December 31, 2005
South Carolina	Certificate of Public Convenience and Necessity to Provide Resold Interexchange and Local Exchange Communication Services; Docket No. 2005-231-C; Order No. 2006-7 granted on January 13, 2006
South Dakota	Certificate to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota; Docket No TC-05-157 granted on October 3, 2006
Tennessee	Authority to Resell Local and Interexchange Long Distance Services; Docket No. 05-00306, Company ID: 128975, granted on August 14, 2006
Texas	Not Registered
Utah	If a reseller, not required to register in UT
Vermont	Certificate of Public Good to Operate as a Provider of Telecommunication Services; CPG No. 810-CR granted on September 30, 2005
Virginia	Certificate to Provide Local Exchange Telecommunications Services; Docket No. PUC-2005-00165 granted on March 10, 2006
Washington	Registered as a Telecom Provider - data services only 2005. Application Docket UT-050951

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

West Virginia	Not Registered
Wisconsin	Certificate of Intrastate Authority to Resell Telecommunication Services and for a Certification as a Telecommunications Utility-Reseller; Docket No. 17001-TI-100 granted on November 9, 2005
Wyoming	Not Registered

Schedule 11.1(h)(ii)

Regulatory Approvals Required to be Obtained

Global Capacity Holdco, Inc. (“GCH”)

FCC	Transfer of Domestic & International 214 Licenses - FRN 0010294528 & FRN 0013207790
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Global Capacity Group, Inc. (“GCG”)

Alabama	Application to Transfer Assets from GCG to Buyer
Arkansas	Notice to Transfer Assets from GCG to Buyer
California	No Requirement
Colorado	Application to Transfer Assets from GCG to Buyer
Florida	Notice to Transfer Assets from GCG to Buyer
Georgia	Application to Transfer Assets from GCG to Buyer
Hawaii	Application to Transfer Assets from GCG to Buyer
Idaho	Notice to Transfer Assets from GCG to Buyer
Illinois	Notice to Transfer Assets from GCG to Buyer
Indiana	Application to Transfer Assets from GCG to Buyer
Iowa	Notice to Transfer Assets from GCG to Buyer
Kansas	Notice to Transfer Assets from GCG to Buyer
Kentucky	Notice to Transfer Assets from GCG to Buyer
Louisiana	Notice to Transfer Assets from GCG to Buyer
Maine	Notice to Transfer Assets from GCG to Buyer
Massachusetts	Notice to Transfer Assets from GCG to Buyer
Michigan	Notice to Transfer Assets from GCG to Buyer
Mississippi	Application to Transfer Assets from GCG to Buyer
Montana	Notice to Transfer Assets from GCG to Buyer

Schedule 11.1(h)(ii) (continued)

Regulatory Approvals Required to be Obtained

Global Capacity Group, Inc. (“GCG”)

Nebraska	Application to Transfer Assets from GCG to Buyer
Nevada	Application (if more than 10% revenue is generated in NV) to Transfer Assets from GCG to Buyer Notice to Transfer (if less than 10% revenue is generated in NV) Assets from GCG to Buyer
New Hampshire	Application to Transfer Assets from GCG to Buyer
New Jersey	Notice to Transfer Assets from GCG to Buyer
New Mexico	Notice to Transfer Assets from GCG to Buyer
New York	Application to Transfer Assets from GCG to Buyer
North Carolina	Notice to Transfer Assets from GCG to Buyer
North Dakota	Notice to Transfer Assets from GCG to Buyer
Oregon	Notice to Transfer Assets from GCG to Buyer
Pennsylvania	Application to Transfer Assets from GCG to Buyer
Rhode Island	Application to Transfer Assets from GCG to Buyer
South Dakota	Notice to Transfer Assets from GCG to Buyer
Texas	Notice to Transfer Assets from GCG to Buyer
Utah	No Requirement
Vermont	Notice to Transfer Assets from GCG to Buyer
Washington	Notice to Transfer Assets from GCG to Buyer
West Virginia	Application to Transfer Assets from GCG to Buyer
Wisconsin	Notice to Transfer Assets from GCG to Buyer
Wyoming	Notice to Transfer Assets from GCG to Buyer

Schedule 11.1(h)(ii) (continued)

Regulatory Approvals Required to be Obtained

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC (“GCD”)

Alabama	Application to Transfer Assets from GCD to Buyer
Arkansas	Notice to Transfer Assets from GCD to Buyer
California	No Requirement
Connecticut	Notice to Transfer Assets from GCD to Buyer
Delaware	Notice to Transfer Assets from GCD to Buyer
Florida	Notice to Transfer Assets from GCD to Buyer
Georgia	Application to Transfer Assets from GCD to Buyer
Illinois	Notice to Transfer Assets from GCD to Buyer
Indiana	Application to Transfer Assets from GCD to Buyer
Kentucky	Notice to Transfer Assets from GCD to Buyer
Louisiana	Notice to Transfer Assets from GCD to Buyer
Maine	Notice to Transfer Assets from GCD to Buyer
Maryland	Notice to Transfer Assets from GCD to Buyer
Massachusetts	Notice to Transfer Assets from GCD to Buyer
Mississippi	Application to Transfer Assets from GCD to Buyer
Montana	Notice to Transfer Assets from GCD to Buyer
Nevada	Application (if more than 10% revenue is generated in NV) to Transfer Assets from GCD to Buyer Notice to Transfer (if less than 10% revenue generated in NV) Assets from GCD to Buyer
New Hampshire	Application to Transfer Assets from GCD to Buyer

Schedule 11.1(h)(ii) (continued)

Regulatory Approvals Required to be Obtained

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC (“GCD”)

New Jersey	Notice to Transfer Assets from GCD to Buyer
New Mexico	Notice to Transfer Assets from GCD to Buyer
New York	Application to Transfer Assets from GCD to Buyer
North Carolina	Notice to Transfer Assets from GCD to Buyer
Ohio	Application to Transfer Assets from GCD to Buyer
Oregon	Notice to Transfer Assets from GCD to Buyer
Pennsylvania	Application to Transfer Assets from GCD to Buyer
Rhode Island	Application to Transfer Assets from GCD to Buyer
South Carolina	Application to Transfer Assets from GCD to Buyer
South Dakota	Notice to Transfer Assets from GCD to Buyer
Tennessee	Application to Transfer Assets from GCD to Buyer
Utah	No Requirement
Vermont	Notice to Transfer Assets from GCD to Buyer
Virginia	No Requirement
Washington	Notice to Transfer Assets from GCD to Buyer
Wisconsin	Notice to Transfer Assets from GCD to Buyer

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	(Jointly Administered)
GLOBAL CAPACITY HOLDCO,)	
LLC,)	Case No. 10-12302 (PJW)
<u>et al.</u> ¹)	
Debtors.)	RE: Docket No. ____
_____)	

**ORDER APPROVING (1) BID OF PIVOTAL GLOBAL CAPACITY, LLC AS THE
HIGHEST AND BEST SALE QUALIFYING BID FOR THE PURCHASE OF
SUBSTANTIALLY ALL OF DEBTORS' ASSETS UNDER AND IN CONJUNCTION
WITH ITS PLAN OF REORGANIZATION; AND (2) CONSUMMATION OF THE SALE
TRANSACTION WITH PIVOTAL GLOBAL CAPACITY, LLC**

WHEREAS, on August 11, 2010, Global Capacity Holdco, LLC and the other above-captioned debtors in possession (collectively, the “Debtors”)² filed and served a motion for entry of an order approving bidding procedures in connection with the sale of substantially all of the Debtors’ assets (the “Sale”), approving procedures relating to assumption and assignment of executory contracts and unexpired leases, approving stalking horse bid protections, approving the form and manner of notice of a sale hearing, and for entry of an order approving and authorizing the sale of substantially all of the Debtors’ assets free and clear of liens, claims, interests and encumbrances and authorizing the assumption and assignment of executory contracts and unexpired leases as part of the sale [DE 115, 142] (the “Sale Motion”). The Sale Motion was filed in conjunction with the Joint Chapter 11 Plan of Reorganization for Global

¹ The Debtors in these cases, along with their case numbers, addresses, and the last four digits of each Debtor’s federal tax identification number, are: Global Capacity Holdco, LLC, 200 S. Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12302)(8858); Global Capacity Group, Inc., 730 North Post Oak Road, Houston, TX 77024 (10-12303)(0073); 20/20 Technologies, Inc., 200 South Wacker, Suite 1650, Chicago, IL 60606 (10-12304)(5612); Centrepath, Inc., 275 Winter Street, Waltham, MA 02451 (10-12305)(9034); Capital Growth Systems, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12306)(3505); Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12307)(1970); FNS 2007, Inc. (f/k/a Frontrunner Network Systems, Corp.), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12308)(7892); Nexvu Technologies, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12309)(4626); and 20/20 Technologies I, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12310)(5514).

² All capitalized terms not defined herein have the meaning in the documents referenced thereby, including the Modified Pivotal APA and the Bidding Procedures.

Capacity Holdco, LLC and Its Filed Affiliates Dated as of August 11, 2010 [DE 113] (the “Plan”), which provided for Plan funding through the Sale.

WHEREAS, on August 24, 2010, the Court entered an order approving sale and contract assumption and assignment procedures (as amended thereafter, the “Bidding Procedures”), scheduling an auction (the “Auction”) for October 14, 2010 and a sale approval hearing (the “Sale Hearing”) for October 19, 2010, and granting related relief (the “Sale Procedures Order”) [DE 171]. The Debtors filed a Notice of Proposed Asset Purchase Agreement with Stalking Horse Bidder on October 1, 2010 [DE 288], which was served that day on all required parties [DE 306], then filed a Notice of Termination of Stalking Horse Bidder Status of Global Acquisition NewCo Corp. (“GC Newco”), Modification of Bidding Procedures and Revised Asset Purchase Agreement on October 4, 2010 [DE 292], which was served that day on all Required Parties [DE 307], to which GC Newco objected [DE 300] (“GC Newco Objection”). Further notices were filed with respect to Auction procedures and timing. [DE 305, 316, 325, 369], and timely served [DE 317, 327, 337, 390].

WHEREAS, on November 8, 2010, the Debtors filed a Motion to Approve Debtors’ Selection of the Bid of Pivotal Global Capacity LLC (“Pivotal GC”) as the Qualifying Bid for the Purchase of Substantially all of the Debtors’ Assets Under or in Conjunction with its Plan of Reorganization and Consummation of the Sale Transaction with Pivotal Global Capacity LLC [DE 392] (the “Pivotal GC Bid Motion”). Objections to the Pivotal GC Bid Motion were filed by Universal Service Administrative Company [DE 414], supplementing prior objections [DE 136, 310] (collectively, “USAC Objection”), by the Prepetition Debenture Holders, Tranche B DIP Lenders and Stalking Horse Bidder [DE 419] (“Debenture Holders Objection”), in which Global Telecom & Technology joined [DE 420] (“GTT Joinder”), and by Capstone Investments [DE 429] (“Capstone Objection”). A hearing was commenced on November 8, 2010, and continued on November 19, 2010. On December 2, 2010, the Debtors filed a Notice of Withdrawal of the Pivotal Bid Motion [DE 479] after the deadline for Court approval of the Pivotal Bid Motion expired.

WHEREAS, the Debtors filed a Motion to Approve Modified Asset Purchase Agreement of Pivotal Global Capacity LLC (“Pivotal GC”) for the Acquisition of the Debtors’ Assets Under or in Conjunction with its Plan of Reorganization, Consummation of a Transaction with Pivotal GC and Assumption and Assignment of Mission Critical Vendor Contracts (“Motion”) January 12, 2011 [DE] (the “Pivotal GC Sale Motion”). In conjunction with the Pivotal GC Sale Motion, the Debtors filed a Notice of Non-Material Plan Modifications and Modified Pivotal APA, and Classes 1-5 Vote for Plan as Modified on January 13, 2011 [DE __] (the “Plan Modification Notice” and attached “Modified Pivotal APA” and “Modified Plan”). The Debtors also filed the Plan Supplement required by the Plan, attaching the Wind Down Budget, on January 13, 2011 [DE] (the “Plan Supplement”). The Debtors also filed a Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) & (2), and 364(e), Fed. R. Bankr. P. 2002, 4001, AND 9014: Authorizing Debtors to Obtain Increased Postpetition Sale Closing Financing on Superpriority and Secured Basis, and Authorizing the Use of Cash Collateral on January 13, 2011 [DE] (the “Sale Facility Motion”). The Pivotal GC Sale Motion, Plan Supplement, Plan Modification Notice and the Sale Facility Motion were timely served on all parties in interest, including all shareholders of record in the Debtors [DE__] A hearing on the Pivotal GC Sale Motion, the Sale and Plan Confirmation and the Sale Facility Motion was held on January __, 2011 (“Sale/Confirmation Hearing”), with appearances as noted on the record at the Sale/Confirmation Hearing. In accordance with the Bidding Procedures and the Sale-related provisions in the Plan, and the Court having considered the filings listed above, arguments, evidence, and representations made at the Sale/Confirmation Hearing, and having considered the other matters submitted to the Court in connection with the approval of the Sale, and good cause appearing,

THE COURT FINDS AND CONCLUDES AS FOLLOWS:

A. The Court has jurisdiction to consider the Sale Motion and Pivotal GC Sale Motion in accordance with 28 U.S.C. §§ 157 and 1334. The Sale Motion and Pivotal GC

Sale Motion constitute core proceedings pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N), and (O), and venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors served the notices required by the Sale Procedures Order on August 30, 2010 on the parties required by and in accordance with the terms and conditions of the Sale Procedures Order, *i.e.* (i) the U.S. Trustee; (ii) the members of and counsel to the Committee; (iii) the DIP Lenders (as defined in that certain Final Order Granting Emergency Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) & (2), and 364(e), Fed. R. Bankr. P. 2002, 4001, and 9014, and the Court's General Orders on Complex Chapter 11 Cases: (I) Authorizing Debtors to Obtain Postpetition Financing on Superpriority and Secured Basis, (II) Permitting the Use of Cash Collateral, and (III) Granting Final Relief [DK 125] the "Final DIP Order"); (iv) counsel to the agent for the DIP Lenders; (v) the Debtors' Pre-Petition Debenture Holders; (vi) the attorneys general for each of the States in which the Debtors conduct operations; (vii) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (viii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (ix) any parties who have expressed a written interest in the Purchased Assets; (x) parties who are known or reasonably believed to have asserted any lien, encumbrance, claim or other interest in the Purchased Assets; and (xi) all governmental agencies that are an interested party with respect to the Sale and transactions proposed thereunder, with notices regarding assumption and assignment of executory contracts and unexpired leases also served on all counter-parties to such contracts and leases (the "Required Parties") and as reflected in the Certificates of Service filed with this Court on September 4, 2010 [DE 208]. Further notices with respect to the Auction and Sale and Pivotal GC Sale Motion and Plan Modification Notice were timely served as set forth above.

C. Mission Critical Vendors and other parties to contracts, executory contracts and leases were notified on August 31, 2010 of procedures to be followed in connection with the assumption and assignment to the Court-approved buyer in conjunction with the Sale, including objections to cure amounts and terms to be set forth on a Cure Schedule [DE

218] (the “Cure Motion”). On September 15, 2010, the Debtors served the Notice of Filing of Cure Schedule Incident to the Debtors’ Sale Motion, the Cure Scheduled and Notice of Debtors’ Procedures with Respect to Assumption and/or Assignment of Certain Executory Contracts and Leases and the Establishment of Cure Costs and Payments Associated Therewith, [DE 218, DE 224]. On October 18, 2010 of an amended deadline for objections of October 25, 2010 was noticed [DE 325, 337]. On October 31, 2010, the Debtor filed the Notice of Debtors’ Designation of Successful Bidder in Conjunction with Reorganization Plan, Rescheduled Sale Hearing, and Assumption and Assignment of Contracts, Executory Contracts and Unexpired Leases and Objection Deadline [DE 369] (“Cure Schedule”), and timely served it on all counter-parties to contracts, executory contracts and unexpired leases proposed to be assumed and assigned to Pivotal GC [DE 390].

D. Objections or reservations of rights with respect to the Cure Motion were filed by ColoSpace, Inc. [DE 268], ITS Communications, Inc. [DE 269, 334], Level 3 Communications, LLC and its affiliates [DE 270], Qwest Communications Company LLC and Qwest Corporation [DE 273], Hobbs Brook Management LLC and 265 Winter LLC [DE 274, 384], Verizon Communications, Inc. [DE 276], AboveNet Communications, Inc. [DE 277], Orbitz, LLC [DE 278], Oracle America, Inc. [DE 279], AT&T Corp. [DE 281], and BCE Nexxia Corporation [DE 282] (collectively, “Cure Amount Objections”). Objections to the Cure Schedule were filed by Verizon Communications, Inc. [DE 416], AboveNet Communications, Inc. [DE 375, 402], Oracle America, Inc. [DE 415], and AT&T Corp. [DE 387] (collectively, “Cure Schedule Objections”).

E. Good and sufficient notice of the Bidding Procedures, as amended; the Sale Motion; Auction; the Sale Hearing; the Pivotal GC Bid Motion, Pivotal GC Plan/Sale Motion and Plan provisions concerning the Sale have been given so as to provide all creditors and parties in interest entitled to notice with such notice and such opportunity for hearing as is appropriate under the facts and circumstances of this bankruptcy case within the meaning of section 102(1) of the Bankruptcy Code and as required by 11 U.S.C. § 363(b)(1), and Fed. R.

Bank. P. 2002(a)(2), (c)(1), and (k), and 6004(a) and (c), and no additional or further notice is required for entry of this Order.

F. Pivotal GC has acquired the Interests and Claims held by the Debenture Holders and DIP Lenders, and has withdrawn the Debenture Holders Objection, GC Newco Objection, and the Stalking Horse Bid, and withdrawn the support of the Debenture Holders and Tranche B DIP Lenders for a sale to Global Telecom & Technology, Inc. (“GTT”). The GTT Joinder has no effect upon withdrawal of the Debenture Holders Objection.

G. The USAC Objection is resolved as follows:

1. Debtors shall continue to pay USF Obligations³ incurred post-petition when invoiced and due in the ordinary course. Within 10 days of the Sale Closing, the Debtors shall pay to USAC any and all invoiced and unpaid USF Obligations which arose on or after the Petition Date through the date of the Closing;

2. Debtors shall treat USAC’s pre-petition claim for unpaid USF Obligations with other unsecured claims under Debtors’ Plan.

3. All USF Obligations invoiced by USAC prior to the Sale Closing which arise as a result of Annual True-Ups will be allocated between pre-petition and post-petition periods; the pre-petition portion of the Annual True-Ups will be included in the USAC unsecured claim, and the portion allocated to the post-petition period will be paid when due.

4. The Buyer shall pay when due any and all post-Closing USF Obligations as invoiced by USAC including, without limitation:

a. all USF Obligations invoiced by USAC on or after the date of the Closing;

³ USF Obligations, Annual True-Ups and Annual Revenue Reports have the meanings ascribed thereto in the USAC Limited Objection.

- b. all USF Obligations invoiced by USAC after the date of the Closing which may arise as a result of the Annual True-Ups, regardless of the revenue period covered, provided that only the portion of USF Obligations determined by Annual True-Ups allocated to the post-petition period will be paid, while the portion due pre-petition is discharged; and
- c. all USF Obligations invoiced by USAC after the Closing which arise as a result of revised or amended Annual Revenue Reports submitted by or on behalf of the Debtors, regardless of the revenue period covered, provided that only the portion of USF Obligations determined by revised or amended Annual Revenue Reports allocated to the postpetition period will be paid, while the portion due prepetition is discharged.

5. In the event that any Annual True-Up conducted by USAC after the date of the Closing results in the issuance of credits toward USF Obligations, the Buyer shall be entitled to the full value of those credits, regardless of the revenue period covered (except that USAC shall first apply any such credits to its outstanding pre-petition or post-petition claims, if any, as applicable);

6. In the event that the Buyer, the Debtors, or any entity on the Debtors' behalf timely submits a revised or amended Annual Revenue Report that results in the issuance of credits toward USF Obligations, the Buyer shall be entitled to the full value of those credits regardless of the revenue period covered by that revised or amended Annual Revenue Report (except that USAC shall first apply any such credits to its outstanding pre-petition or post-petition claims, if any, as applicable);

7. The Debtors shall timely submit all Quarterly and Annual Revenue Reports which become due on or before the date of the Closing;

8. The Buyer shall timely submit all Quarterly and Annual Revenue Reports that become due after the date of the Closing and, if those Annual Revenue Reports cover revenue periods prior to the Closing date, the Buyer shall include the Debtors' pre-Closing revenues; and

9. Nothing in this Sale Order or in connection with the Sale shall prohibit, alter or limit USAC's rights to (i) audit the Debtors' reported contributor revenues, including with respect to pre-sale and pre-petition periods, (ii) assess and invoice any USF Obligations resulting from any such audit, and (iii) pursue all of USAC's rights related to any such audit including, without limitation, amending previously filed claims against the Debtors.

H. The Capstone Objection is overruled as it is a fee allowance issue rather than a Sale objection.

I. The Debtors extensively marketed the Sale Assets in good faith, and the Debtors' investment bankers sought equity or debt financing to support the Stalking Horse Bid.

J. By the deadline for submitting bids in the Bidding Procedures, (1) GC Newco, initially designated as the Stalking Horse Bidder, was a Qualified Bidder; (2) Pivotal GC submitted a bid (as amended, the "Pivotal GC Bid") with attached form of Asset Purchase Agreement, evidence of financial ability to close, and all other documents required to be a Qualified Bidder; and (3) GTT also submitted a bid without a form of Asset Purchase Agreement or schedules and without evidence of financial ability to close. The Debtors notified GC Newco, Pivotal GC, GTT and other required parties on October 20, 2010 that Pivotal GC was determined to be the lead bidder.

K. On October 21, 2010, the Debtors commenced the Auction over the objection of GC Newco. During the Auction, GTT submitted an additional bid, a form of Asset Purchase Agreement (without schedules), and certain evidence related to its financial ability to close. The Auction was continued to October 25, 2010 to allow all parties in interest to evaluate the additional GTT documents.

L. On October 25, 2010, the Auction continued. GTT and GC Newco submitted a combined bid. Pivotal GC submitted an amendment to the Pivotal GC Bid. On October 26, 2010, Pivotal GC provided the Debtors with a formal, written amendment to the Pivotal GC Bid. On October 26, 2010, the Debtors considered and evaluated the bids, and determined that Pivotal GC was the Successful Bidder.

M. The Debtors selected the Pivotal GC as the Successful Bidder based upon criteria that included, without limitation, the following:

1. The bid was structured in such a fashion that could confirm a plan;
2. The documentation provided by Pivotal relative to financial ability to close had the least risk of default;
3. the offer was a highest and best offer for the greatest number of classes of creditors; and
4. the indication from one of the largest Mission Critical Vendor was that Pivotal was the purchaser of choice.

N. The Pivotal GC Bid was withdrawn when it was not approved by the deadline set forth in the Pivotal GC Bid. However, the Debtors have sought approval of the Modified Pivotal APA which is substantially similar to the Pivotal GC Bid, with modifications described in the Pivotal GC Sale Motion and Plan Modification Notice.

O. Based on the record presented, the Debtors have exercised sound and considered business judgment in deciding that the Modified Pivotal APA is the best and highest bid susceptible of plan confirmation to acquire the Purchased Assets. Based upon such evidence, the Court finds that it is in the best interests of the Debtors and the Debtors' estates: (1) to consummate the Sale to Pivotal GC in accordance with the Modified Pivotal APA; and (2) to assume and assign to Pivotal GC the Assumed Liabilities, as set forth on the Schedules to the Modified Pivotal APA.

P. The Modified Pivotal APA and all schedules and exhibits thereto fully complied with all of the requirements set forth in the Bidding Procedures, as modified, and the

Plan provisions regarding the Sale. The Contracts and the Real Property Leases defined in the Modified Pivotal APA are agreements or are executory contracts and unexpired leases within the meaning of Bankruptcy Code section 365. The Sale and the assumption and assignment of the Contracts and Real Property Leases and Assumed Liabilities to Pivotal GC are approved and authorized under the Bankruptcy Code, including Sections 105, 363, 365 and 1123 of the Bankruptcy Code.

Q. In connection with the Pivotal GC Bid, Pivotal GC submitted sufficient and satisfactory written evidence that Pivotal GC has the financial wherewithal to close the Sale and to satisfy Cure obligations and Assumed Liabilities when such obligations become due for the purpose of demonstrating feasibility (as required by Bankruptcy Code section 1129(a)(11)), adequate assurance of future performance with respect to the Assumed Liabilities (as required by section 365) under the Plan and in compliance with the Sale Procedures Order.

R. Schedule 2.3(c) to the Modified Pivotal APA and the subparagraphs below set forth the Debtors' proposed payments and payment terms, if any, that are required pursuant to sections 365(b)(1)(A) and 365(b)(1)(B) of the Bankruptcy Code and the satisfaction of Claims of Mission Critical Vendors that are not executory contracts and unexpired leases (collectively, the "Cure"), all of which are included in the Debtors' assumption and assignment of the Assumed Liabilities (the "Agreed Cures"). The Agreed Cures set forth the amounts and Cure terms reflected in the Cure Schedule, and amounts and terms agreed to by the holders of Cure Schedule Objections, as set forth in the Pivotal GC Sale Motion, except as set forth in the following subparagraphs. Other than as set forth in the Pivotal APA Schedule 2.3(c) and the subparagraphs below, or separate order of the Court, no other Cure amounts are due or need be satisfied in order for the Debtors to assume, and assign to Pivotal GC the Assumed Liabilities. The Assumed Liabilities include, and Pivotal GC shall pay current accrued and unbilled obligations under assumed Contracts and Real Property Leases when invoiced and due post-Closing in the ordinary course.

1. Level 3 Communications, LLC and its affiliates: The Debtors will pay \$805,794.88 to satisfy all pre-petition undisputed amounts, of which \$252,458.21 will be in the form of application of the adequate assurance deposit held by Level 3 against the total amounts due, with the net due in cash on the Closing Date/Plan Effective Date. Level 3 will receive and Pivotal GC will maintain an adequate assurance deposit going forward of \$134,548 (one month current MRC).

2. Qwest Communications Company, LLC f/k/a Qwest Communications Corporation and Qwest Corporation: Debtors will pay \$718,976.05 to satisfy all pre-petition undisputed amounts, satisfied in part by applying the \$553,355.56 adequate assurance deposit held by Qwest against the total amounts due, with the net due in cash on the Closing Date/Plan Effective Date. Qwest will receive and Pivotal GC will maintain an adequate assurance deposit going forward of \$497,184 (one month current MRC), of which \$100,000 already exists in the form of a letter of credit.

3. Verizon Communications, Inc. and its subsidiaries: Debtors will pay \$1,625,765.82 to satisfy all pre-petition undisputed amounts, satisfied in part by applying the \$603,285.88 adequate assurance deposit held by Verizon against the total amounts due, with the net due in cash on the Closing Date/ Plan Effective Date. The Cerner escrow agreement will be maintained, as requested. Debtors and Pivotal GC will separately reach an agreement with Verizon on the requirements for future deposits and / or minimal cash balances, given the structure, backing and health of the new company. Debtors expect to reach an agreement with Verizon on the offset of pre-petition amounts owed by Verizon and Verizon's prepetition Claim.

4. AT&T Corp. and its affiliates: Debtors will pay \$4,226,777 to satisfy all pre-petition undisputed amounts, and pay \$433,000 as full settlement

for all disputed amounts. Debtors will apply the \$1,021,006.42 adequate assurance deposit held by AT&T against the total amounts due, with the net due in cash on the effective date. Debtors and Pivotal GC after Closing will keep the Cerner escrow agreement in place, as requested.

5. AboveNet Communications, Inc. [DE 277, 375, 402]: The amount listed on Schedule 2.3(c) is the prepetition amount due. The Debtors are current on postpetition amounts invoiced, and postpetition amounts have been paid in the ordinary course, and will be paid post-Closing in the ordinary course as Assumed Liabilities.

6. Oracle America, Inc. [DE 279, 415]: The Debtors have clarified with Oracle the specific agreement being assumed and assigned, *i.e.* Oracle service contract #4961155, which was paid current in November 2010 and has no pre-petition amounts due.

S. The Cure Objections not addressed and satisfied through the foregoing treatment are resolved or overruled as follows:

1. ColoSpace [DE 268]: Schedule 2.3(c) includes the Cure Amount sought by ColoSpace.

2. ITS Communications, Inc. [DE 269, 334]: The Contract expired by its terms in accordance with a stipulated order [DE 156], mooted assumption and Cure objections.

3. 265 Winter LLC and Hobbs Brook Management LLC [DE 274, 384]: The Debtors' evidence of ability to continue performing under this un-defaulted lease as owned by Pivotal GC, with a continued stream of revenue and debts discharged, is sufficient to meet the adequate assurance requirements of § 365(f)(2). The request of this landlord for a deposit in the amount of seven months of rent, \$104,309.31, is rejected.

4. Orbitz, LLC [DE 278]: Contract rejected, as shown on Schedule 2.1(c)(ii), which does not include Orbitz, mooted assumption Cure objections.

5. BCE Nexxia [DE 282]: [the assumption and assignment objection will be separately addressed in conjunction with resolution of Debtors' motion to assume and assign this Contract [DE 438].

T. The evidence on record regarding the ability of Pivotal GC to pay the Purchase Price and to fund the operating expenses of the Debtors' business on a going forward basis is sufficient evidence of adequate assurance of future performance by Pivotal GC with respect to the Assumed Liabilities that constitute executory contracts and unexpired leases, as required pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code and the Bidding Procedures.

U. Effective as of the Closing, the Debtors' bankruptcy estates shall be relieved pursuant to Section 365(k) of the Bankruptcy Code from any liability for any obligations under and with respect to the Assumed Liabilities that constitute executory contracts and unexpired leases.

V. The Pivotal GC Bid and Modified Pivotal APA were proposed by Pivotal GC under the same procedures available to all bidders and were entered into in good faith between Pivotal GC and the Debtors after review and approval by the Court and are in good faith within the meaning of section 363(m) of the Bankruptcy Code. There was no evidence of collusion, fraud, control of the Purchase Price by any agreement among bidders, or actions prohibited by Bankruptcy Code section 363(n) raised or admitted in connection with the Pivotal GC Bid, the Modified Pivotal APA or the Sale. Pivotal GC is acquiring the Purchased Assets in good faith and is a good faith purchaser within the meaning of and is entitled to the protections of Bankruptcy Code section 363(m). Pivotal GC is a "disinterested" party within the meaning of 11 U.S.C. § 101(14), and is not an insider of the Debtors or related to the Debtors in any way.

W. The purchase price offered by Pivotal GC under the Modified Pivotal APA constitutes the best offer and, under the circumstances, is the highest and best offer for the

Purchased Assets received by the Debtors, and is, and shall be deemed, to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States and any State.

X. The transfer of any assets from Magenta netLogic Limited, UK (“Magenta”) to the Debtors, in consideration for release and extinguishment of intercompany notes, if applicable, is for fair value. Magenta has not received any prepetition or post-petition advances from any prepetition or post petition lender of the Debtors.

Y. Predicates exist under one or more applicable subsections of Section 363(f) as well as Section 1123 of the Bankruptcy Code to authorize the Sale to Pivotal GC of the Purchased Assets free and clear of all liens, Encumbrances, Claims and Interests of any nature and of all parties in the Purchased Assets.

Z. No third party consents are needed for Closing the Modified Pivotal APA other than consents from Governmental Bodies as set forth in the Modified Pivotal APA.

AA. Pivotal GC would not have entered into the Modified Pivotal APA and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to Pivotal GC or (to the extent permitted) its respective assignees, the assumption, assignment and sale of the Assumed Contracts and Real Property Leases to Pivotal GC or (to the extent permitted by the Agreement) its respective assignees, and the assumption of the Assumed Liabilities by Pivotal GC or (to the extent permitted by the Agreement) its respective assignees were not, except as otherwise provided in the Modified Pivotal APA with respect to the Assumed Liabilities and Permitted Encumbrances, free and clear of all Claims, Interests and Encumbrances of any kind or nature whatsoever, or if Pivotal GC would, or in the future could (except and only to the extent expressly provided in the Modified Pivotal APA or any amendments thereto, and with respect to the Assumed Liabilities), be liable for any of such Claims, Interests or Encumbrances or other future liabilities arising out of past conduct of the Debtors or the Debtors’ past ownership of the Purchased Assets (such other liabilities or obligations being referred to collectively as the “Successor Liabilities”), including, but not

limited to, Encumbrances or Successor Liabilities in respect of the following (the following being referred to collectively as the “Successor Liability Documents, Statutes and Claims”): (1) any employment or labor agreements; (2) all deeds of trust and security interests; (3) any pension or medical benefit plan of the Debtors, compensation or other employee benefit plan of the Sellers, welfare, agreements, practices and programs; (4) any other employee, worker’s compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to: (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or federal benefits or claims relating to any employment with the Sellers or any predecessors; (5) environmental or other claims or Liens arising from existing conditions on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or other state statute; (6) any bulk sales or similar law; and (7) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (8) any theories of successor liability, including any theories on successor products liability grounds.

BB. Pivotal GC as the Purchaser is not merely a continuation of the Debtors, and no common identity of incorporators, directors or stockholders exists between Pivotal GC and the Debtors. The Sale is not being entered into fraudulently. If the Sale is consummated as a direct transfer of Purchased Assets, Pivotal GC will not be, as a result of any action taken in connection with the Sale or otherwise, (i) a successor to the Debtors or their bankruptcy estates

(other than with respect to the Assumed Obligations and any obligations arising under the relevant Assumed Contracts and Real Property Leases from and after the Closing); or (2) de facto or otherwise, have merged or consolidated with or into the Debtors. If the Sale is consummated through a Reorganization Alternative, Pivotal GC will be the owner of equity securities of one or more of the Debtors who will continue for regulatory and operational purposes, or Pivotal will be the successor to one or more of the Debtors for regulatory and operational purposes, but all Claims and liabilities of the Debtors and their bankruptcy estates through the Closing Date and all Interests in the Shares, except for the Assumed Liabilities, are still discharged under the Plan, and Pivotal GC will have no Successor Liabilities except to the extent of the Assumed Liabilities. A transfer of Shares in the Debtors under the Reorganization Alternative through a direct purchase of the Shares of one or more of the Debtors, or by the cancellation of all existing shares and issuance of new equity interests in the Debtors, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions will vest in Pivotal GC all right, title and interest in such transferred Shares free and clear of any and all rights, Interests, Encumbrances and Claims of any kind or nature, whether imposed by agreement, understanding, law, equity or otherwise, all of which shall attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have and to all claims and defenses the Debtors or other parties may possess with respect thereto.

CC. The Modified Pivotal APA and the assumption and assignment of the Assumed Liabilities by the Debtors to Pivotal GC are approved and authorized under the Bankruptcy Code, including Sections 105, 363, 365 and 1123 of the Bankruptcy Code.

DD. Nothing contained in the Plan or any plan of reorganization or liquidation will alter, conflict with, or derogate from, the provisions of the Modified Pivotal APA or this Order, and the terms of the Plan shall be conformed to the extent that any provision of the Pivotal APA is inconsistent with the Plan.

EE. Pivotal GC, as successor to the DIP Lenders, has been authorized by order granting the Sale Facility Motion to advance additional amounts under the DIP Loan Documents (as defined in the Final DIP Order), secured by the collateral pledged thereunder, as a DIP “Sale Facility” (as defined in the Sale Facility Motion) for the Purchase Price, including through a credit bid of all amounts advanced.

FF. All findings of fact and conclusions of law made by the Court at the hearing on the Sale Facility Motion and Plan Confirmation are incorporated herein.

GG. The Debtors have satisfied the applicable provisions of the Sale Procedures Order, the Bidding Procedures, and the Bankruptcy Code.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. The Sale Motion and the Pivotal GC Sale Motion are hereby granted and any objections or oppositions with respect thereto not previously withdrawn are hereby overruled.
2. The Debtors are authorized pursuant to (without limitation) Sections 1123(a)(5), 363(b), 363(f), 363(k), 363(1) and 365(b) of the Bankruptcy Code to enter into and perform the Modified Pivotal APA. The Debtors are authorized to (i) consummate the Sale to Pivotal GC in accordance with and subject to the terms and conditions of the Modified Pivotal APA and the provisions thereof; (b) execute and deliver, and to perform fully under, consummate and implement the Modified Pivotal APA, together with all additional instruments and documents contemplated by the Modified Pivotal APA or that may be reasonably necessary or desirable to implement the Modified Pivotal APA, and (iii) take any and all actions necessary or useful to effectuate and comply with the terms of the Modified Pivotal APA and all other applicable documents, if any, in order to complete the Sale, including the transfer of the equity interests in Magenta to Pivotal GC or the transfer of assets of Magenta to such Debtors holding intercompany claims against Magenta, in consideration for release of those intercompany claims, which transfer will be free and clear of any liens and claims, and to take any other action with respect to the equity interests and assets of Magenta as may be deemed appropriate or desirable by Debtors, and to take any other action with respect to the equity interests and assets of

Magenta as may be deemed appropriate or desirable by the Debtors and Pivotal GC. One or more of the Debtors are authorized to cancel all existing shares and issue or transfer shares of stock to Pivotal GC to evidence the direct purchase of such shares, or the issuance of new shares, or the acquisition of shares pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions if an Alternative Transaction under the Modified Pivotal APA/Reorganization Election under the Plan is effected, and the Interests in the Shares are deemed to terminate whether or not documentation of the Shares is surrendered to the Debtors or transferred to Pivotal GC.

3. The Debtors are hereby authorized to: (a) assume and assign to Pivotal GC, effective upon the Closing, each of the Assumed Liabilities, with Cure obligations paid and Allowed Claims of the counterparties to Assumed Liabilities satisfied through treatment under the Plan and Confirmation Order and in accordance with the Agreed Cures set forth in Schedule 2.3(c) to the Modified Pivotal APA and paragraph R above; and (b) execute and deliver to Pivotal GC such documents or other instruments as may be necessary to assign and transfer each of such Assumed Liabilities to Pivotal GC. In accordance with Bankruptcy Code section 365(f), all of the Contracts and Real Property Leases provided for in the Modified Pivotal APA are transferrable notwithstanding any provisions prohibiting or restricting assignment.

4. The Debtors shall pay all Cure payments required for the Assumed Liabilities at Closing and thereafter as set forth in paragraph R above under the terms of the Plan and Confirmation Order, and shall do so first from any estate funds deemed unencumbered to the extent such funds have not been used to satisfy Administrative Expenses. The Cure amounts and terms required for each Assumed Liability, if any, shall be the amount set forth in Modified Pivotal APA Schedule 2.3(c) and paragraph R above. As of the Closing, other than the Cure for a respective Assumed Liability, if any, the non-Debtor party to each Assumed Liability shall be, and hereby is, barred and estopped from asserting against the Debtors, their property, or assets, or Pivotal GC any obligation thereunder which arose or accrued prior to the Petition Date, whether by way of affirmative claim, counterclaim, defense, set-off or otherwise. Each

counterparty to an assigned Contract or Real Property Lease is hereby forever barred, estopped, and permanently enjoined from raising or asserting against Pivotal GC or its property any assignment fee, default, breach, claim, pecuniary loss, liability or obligation (including whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the assigned Contracts and Real Property Leases existing as of the Closing Date or arising by reason of the Closing, except for the Assumed Liability Cure, if applicable.

5. Except as expressly permitted or otherwise specifically provided for in the Modified Pivotal APA or this Order, pursuant to sections 105(a), 1123, and 363(f) of the Bankruptcy Code, Pivotal GC is acquiring the Purchased Assets on the terms and conditions set forth in the Modified Pivotal APA, and even if accomplished through a Reorganization Election (Alternative Transaction under the Modified Pivotal APA), upon Closing such Purchased Assets including Shares shall be free and clear of all liens, Claims, Interests, obligations and Encumbrances whatsoever, including all debts and claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors and whether imposed by agreement, understanding, law, equity or otherwise, including but not limited to claims otherwise arising under doctrines of successor liability or vicarious liability of any kind or character arising at any time prior to the Closing of the Sale, including the Successor Liabilities. Except with respect to and limited to Assumed Liabilities, Pivotal GC shall take title to and possession of the Purchased Assets directly or indirectly free and clear of all liens, claims, obligations, setoff and recoupment interests and encumbrances and Interests of any kind or nature whatsoever, including all debts and claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors and whether imposed by agreement, understanding, law, equity or otherwise, including any avoidable transfer claims against any of the Debtors or their affiliates, including to the extent their Shares are Purchased Assets.

6. Upon the Closing of the Sale and the Effective Date of the Plan, Pivotal GC and the Debtors shall receive the full benefit of all discharge, releases and injunctions provided for in

the Plan and section 1141(d) of the Bankruptcy Code. All liens, Claims, Encumbrances and Interests are deemed extinguished and terminated, except for Assumed Liabilities, but to the extent necessary or useful to establish clear title, parties in interest shall execute and deliver to the Debtors any instrument or document required to effect a release of liens, Claims, Encumbrances or Interests in accordance with this Order and the Plan, and Debtors may execute and deliver any such instruments and documents under power of attorney or otherwise. Pivotal GC is not liable for any pre- or post-petition debts of the Debtors other than with respect to payment of the Purchase Price and Assumed Liabilities as set forth in the Modified Pivotal APA, whether or not an Alternative Transaction under the Modified Pivotal APA/Reorganization Election under the Plan is exercised.

7. This Order (a) shall be effective as a determination, as of the Closing, that all Claims or Interests of any kind or nature whatsoever existing as to the Debtors or the Purchased Assets, including Shares, prior to the Closing have been unconditionally released, discharged and terminated as to the Shares and other Purchased Assets, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all Governmental Bodies and all parties in interest in this case and their employees, principals and agents. Subject to the Claims and Interests attaching to the proceeds of the Sale, each of the Debtors' creditors, equity interest holders and other parties in interest is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Claims and Interests in the Purchased Assets, if any, as such Interests may have been recorded or otherwise exist, and in the absence of such action, the Debtors are authorized as attorney in fact for such parties to take such actions.

8. Each and every federal, state, and local government agency or department, and each and every utility or provider of telephone or other service, is hereby authorized and directed to accept any and all documents and instrument, including without limitation a certified copy of this Order, which are necessary and appropriate to consummate the transactions contemplated by the Modified Pivotal APA, including without limitation the transfer of the Purchased Assets to

Pivotal GC directly or indirectly through an Alternative Transaction under the Modified Pivotal APA/Reorganization Election under the Plan.

9. Neither Pivotal GC nor its affiliates, owners, principals, agents, successors or assigns shall, as a result of the consummation of the Sale, (a) be as successor to the Debtors or their estates; (b) have, de facto or otherwise, merged or consolidated with any of the Debtors or their estates except to the extent the Reorganization Election is exercised through a direct purchase of shares of one or more Debtors or by the cancellation of all existing shares and issuance of new shares or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with a full discharge of all Interests, Claims, Encumbrances and liabilities through the Closing except for Assumed Liabilities; (c) be a continuation or substantial or mere continuation of the Debtors or any enterprise of the Debtors except to the extent the Reorganization Election is exercised through a direct purchase of shares of one or more Debtors or by the cancellation of all existing shares and issuance of new shares or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions with a full discharge of all Interests, Claims, Encumbrances and liabilities through the Closing except for Assumed Liabilities; (d) be deemed to have obtained the Purchased Assets via a fraudulent transfer or conveyance. Except for the Assumed Liabilities, the transfer of the Purchased Assets to Pivotal GC under the Modified Pivotal APA shall not result in (i) Pivotal GC, its affiliates, owners, members, principals, successors, assigns or agents or the Purchased Assets having any liability or responsibility for any claim against the Debtors or against an insider of the Debtors; (ii) Pivotal GC, its affiliates, members, owners, principals, successors, assigns, or agents or the Purchased Assets having any liability or responsibility whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Interests or Excluded Liabilities; or (iii) Pivotal GC, its affiliates, members, owners, principals, successors, assigns or agents or the Purchased Assets having any liability or responsibility to the Debtors except as expressly set forth in the Modified Pivotal APA. Without

limiting the effect or scope of the foregoing, as of the Closing, Pivotal GC shall have no successor or vicarious liabilities of any kind or character arising out of, in connection with, or in any way relating to, the operation of the Purchased Assets prior to the Closing, including no Successor Liabilities.

10. In the event of an Alternative Transaction/Reorganization Election, (i) the transfer of the Shares to the Buyer pursuant to, and subject to the terms of, the Alternative Transaction shall constitute a legal, valid and effective transfer of the Shares, and shall, upon the consummation of the Closing, vest in the Buyer good and marketable title in and to the Shares, free and clear of all Interests, Claims, liens and Encumbrances of any kind or nature whatsoever, (ii) all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and other regulatory authorities, lenders, trade and other creditors holding any claims to the Shares, are forever barred and estopped from asserting against the Buyer, its successors or assigns (to the extent allowed by law), its property, its officers, directors and shareholders or the Shares, such persons' or entities' Claims and Interests, and (iii) all such Claims and Interests shall be unconditionally released and terminated as to the Shares.

11. To the extent administered by the Debtors and approved by the Court, any liens, Encumbrances on, Claims against and Interests in the Purchased Assets not satisfied out of escrow in connection with the Closing of the Sale are deemed transferred solely to the proceeds of the Sale. Any such proceeds shall be distributed in accordance with Debtors' Plan, pursuant to an order of the Court, or as otherwise required by the Bankruptcy Code.

12. If any Governmental Bodies have not yet granted Regulatory Approval required for the consummation of the Modified Pivotal APA as of the Regulatory Approval Date defined in the Modified Pivotal APA, such that (i) certain of the Purchased Assets cannot be transferred to Pivotal GC or Pivotal GC has not been authorized to provide telecommunications services, (ii) pending receipt of requisite telecommunications regulatory authorizations from State and Federal regulatory agencies and/or consent of State and Federal regulatory agencies to the transfer of such Purchased Assets, or (iii) if an attempted assignment of any Contract or Real Property

Lease, without the consent of any other Person that is a party thereto, would constitute a breach thereof or in any way negatively affect the rights of Buyer (unless the restrictions on assignment would be rendered ineffective pursuant to sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended), as the assignee of such Contract or Real Property Lease, as the case may be, thereunder, the Debtors shall retain title to such assets (the “Non-Transferred Assets”) and any Assumed Liabilities related to such assets, pending receipt of such authorizations and consents, and shall hold and treat such assets in accordance with the terms set forth in a management agreement to be agreed upon between Pivotal GC and Debtors. Upon receipt from time to time of any such necessary consents and approvals, such Non-Transferred Assets as are subject to the consents and approvals so received shall be transferred to Pivotal GC in accordance with the Modified Pivotal APA, and Pivotal GC shall assume all related Assumed Liabilities as if such Non-Transferred Assets and related Assumed Liabilities had been transferred to and assumed by Pivotal GC at the Closing.

13. Pivotal GC’s acquisition pursuant to this Order and the Modified Pivotal APA is held to be in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Pivotal APA shall not affect the validity of the Sale or any rights or protections accorded to Pivotal GC under the Modified Pivotal APA or this Order or the Confirmation Order, unless such authorization is duly stayed pending such appeal.

14. Pivotal GC is entitled to credit bid the Pre-Petition Debentures and DIP Facility as partial satisfaction of its Purchase Price obligations and to fund and utilize increases of the DIP Facility, *i.e.* the Sale Facility, to satisfy additional amounts payable under the Pivotal APA. The credit bid by Pivotal GC of the Interests and Claims held by the Debenture Holders and Tranche A and Tranche B DIP Lenders and the Pivotal GC-funded Sale Facility in satisfaction of Pivotal GC’s Purchase Price obligations under the Modified Pivotal APA pursuant to Bankruptcy Code § 363(k), and § 1123 to the extent § 363(k) is incorporated therein, is approved.

15. The Modified Pivotal APA and any related agreements, documents or other

instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any modification, amendment or supplement does not have a material adverse effect on the Debtors' estates. As and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale, including such actions as may be necessary to vest, perfect or confirm, or record or otherwise, Pivotal GC's right, title and interest in and to the Purchased Assets or to implement an Alternative Transaction under the Modified Pivotal APA/Reorganization Election under the Plan.

16. If the Reorganization Election is made, new common stock issued to Pivotal GC on and after the Closing need not be registered under the Securities Act or any state or local securities laws, except as provided in the Plan, and the Reorganized Debtors may amend their corporate and/or limited liability company structure, articles of incorporation, by-laws, operating agreements and other operative documents.

17. This Court retains jurisdiction: (a) to enforce and implement the terms and provisions of the this Order and the Modified Pivotal APA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith; (b) to resolve or adjudicate any disputes arising under or related to the Modified Pivotal APA, the DIP Loan Documents or the Pivotal GC DIP Facility and Sale Facility; (c) to interpret, implement and enforce the provisions of this Order; (d) protect Pivotal GC and/or the Purchased Assets from or against any Claims or Interests asserted in the Purchased Assets or Pivotal GC, including by or through the Debtors; and (e) to the extent permitted by applicable law, grant injunctive relief, including permanently enjoining each and every holder of any Claim or Interest from

commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or encumbrance against Pivotal GC or the Purchased Assets.

Dated _____, 2011

The Honorable Peter J. Walsh
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re:	}	Chapter: 11
GLOBAL CAPACITY HOLDCO, LLC, et al. ¹ ,		Case No. 10-12302-PJW
Debtors,		

NOTICE OF NON-MATERIAL PLAN MODIFICATIONS AND MODIFIED PIVOTAL APA, AND CLASSES 1-5 VOTE FOR PLAN AS MODIFIED

Global Capacity Group, Inc., 20/20 Technologies, Inc., Capital Growth Systems, Inc., CentrePath, Inc., and Global Capacity Direct, LLC fka Vanco Direct USA, LLC, 2020 Technologies I, LLC, NEXVU Technologies, LLC, FNS 2007, Inc. fka Frontrunner Network Systems, Corp. and Global Capacity Holdco, LLC and Capital Growth Acquisition, Inc. (collectively, the “Debtors”) and Pivotal Global Capacity, LLC (“Pivotal GC”), by and through their undersigned counsel, hereby notify the Court and all parties on the Official Service List and the parties that have filed objections to the Joint Chapter 11 Modified Plan of Reorganization for Global Capacity Holdco, LLC and its Filed Affiliates Dated as of August 11, 2010 (the “Plan”) [DE 113] of their modifications to the Plan, and their modifications to the Pivotal GC Asset Purchase Agreement, as filed with the Court on November 19, 2010 [DE 446] (“Pivotal APA”). The Modified Plan is Exhibit A, a blackline showing amendments to the Plan is Exhibit B, the Modified Pivotal APA is Exhibit C, and a blacklined Modified Pivotal APA is Exhibit D.

¹ The Debtors in these cases, along with their case numbers, addresses, and the last four digits of each Debtor’s federal tax identification number, are: Global Capacity Holdco, LLC, 200 S. Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12302)(8858); Global Capacity Group, Inc., 730 North Post Oak Road, Houston, TX 77024 (10-12303)(0073); 20/20 Technologies, Inc., 200 South Wacker, Suite 1650, Chicago, IL 60606 (10-12304)(5612); Centrepath, Inc., 275 Winter Street, Waltham, MA 02451 (10-12305)(9034); Capital Growth Systems, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12306)(3505); Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12307)(1970); FNS 2007, Inc. (f/k/a Frontrunner Network Systems, Corp.), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12308)(7892); Nexvu Technologies, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12309) (4626); and 20/20 Technologies I, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12310)(5514).

Pursuant to Bankruptcy Code § 1127(a), the Debtors state that the modifications do not adversely affect parties that voted on the Plan, and ask the Court to find in the Confirmation Order that votes accepting the Plan do not need to be re-solicited. As set forth below, Pivotal GC, as assignee and successor to the DIP Lenders and Pre-Petition Debenture Lenders withdraws the objections to confirmation of the Plan and the objections to the Pivotal APA with respect to the Plan and Pivotal APA as modified, and votes in favor of the Plan as modified on behalf of Classes 1-5. The treatment of other creditors and parties in interest is unchanged from the Plan they previously accepted, or reflects agreements with such parties.

The modifications provide in general, as follows:

A. Plan Modifications

The Joint Chapter 11 Modified Plan of Reorganization for Global Capacity Holdco, LLC and its Filed Affiliates Dated as of August 11, 2010 (the “Plan”) [DE 113] is hereby modified in the following ways:

1. The Pivotal APA, as Modified in the form attached as Exhibit A and described below, shall be deemed the “APA” under Plan § 1.5.
2. “Credit Bid” defined in § 1.35 includes a credit bid of DIP Claims, Increased DIP Claims and Pre-Petition Debenture Claims, to the extent designated, by Pivotal GC as assignee and successor to the DIP Lenders and the Pre-Petition Debenture Lenders.
3. “New Common Stock” defined in Plan § 1.85 is clarified to refer only to Newco, and not Pivotal GC; references in the Plan to New Common Stock are inapplicable to the Sale to Pivotal GC, even if the Sale to Pivotal GC is structured through a Reorganization Election.
4. The Plan is clarified throughout that references to Newco and treatment through Newco are now inapplicable.
5. In accordance with Plan § 1.97, Dan Kardatzke is designated as the Plan Administrator, or if the Reorganization Election is exercised, shall be the sole manager,

officer and director in accordance with Plan § 5.10(c), pending any post-Effective Date alterations that may be made to the Debtors' articles of incorporation, by-laws, operating agreements or other corporate documents by the Reorganized Debtors, and any changes of officers or board members thereafter. Pivotal GC is a limited liability company, and F. Francis Najafi is the decision-maker of its Managing Member. The Purchaser plans to implement the Sale through an Asset Transfer, instead of a Reorganization Election, so that there will be no Reorganized Debtors or Successor to the Debtors under the Plan. If a Reorganization Election is made before the Closing, the Purchaser will identify the individuals who will serve as officers and directors of the Reorganized Debtors.

6. "Pre-Petition Debenture Lenders" defined in Plan § 1.108 refers to Pivotal GC as assignee and successor holder of all rights, title and interests in, to and under (a) the Pre-Petition Debenture Agreements; (b) the following debentures and Secured Claims (collectively, the "Pre-Petition Debentures"): the August 2009 Debentures, August Debenture Secured Claims, the July 2009 Debentures, July Debenture Secured Claims, the March 2008 Debentures, March Debenture Secured Claims, November 2008 Debentures, November Debenture Secured Claims, the VPP 2009 Debentures, VPP Debenture Secured Claims; (c) any registration rights and agreements related thereto; (d) the Pre-Petition Debenture Claims; (e) the Debenture Collateral; (f) any warrants to purchase Common Stock of the Company issued to the Assignor at the time it purchased any of the Pre-Petition Debentures and any and all interest therein; (g) all orders in the above-captioned cases relating to any of the above (a) through (f); and (h) all documents or instruments relating to any of the above (a) through (f) but excluding (i) any and all rights of the Assignors to indemnification under any of (a) through (h) for any claims asserted or that may hereafter be asserted against any of the Assignors as holders of Pre-Petition Debentures and arising prior to the Effective Date) (all of (a) through (h) but excluding (i) above being referred to herein, collectively, the "Assigned Debentures"). The definition of Pre-Petition Debenture Agents in Plan § 1.105 (and the respective

Agents for each Debenture) is no longer applicable.

7. Pivotal GC is the “Purchaser” as defined in Plan § 1.116.

8. “Sale Proceeds” as defined in Plan § 1.124 includes the Credit Bid of Pivotal GC as successor to the DIP Lenders and the Pre-Petition Debenture Lenders, but does not include the New Common Stock Pool or other references to a Newco sale.

9. Plan § 3.1.A.6 regarding Class 6 Mission Critical Vendor Claims is modified to confirm that they will be satisfied by the Debtors’ payment of Cure Amounts pursuant to treatment proposed by the Debtors in their October 31, 2010, Notice of Debtors’ Designation of Successful Bidder in Conjunction with Reorganization Plan, Rescheduled Sale Hearing, and Assumption and Assignment of Contracts, Executory Contracts and Unexpired Leases and Objection Deadline [DE 369] except with respect to the Mission Critical Vendors that objected to such treatment: Verizon Communications, Inc. [DE 276, 416], AboveNet Communications, Inc. [DE 277, 375, 402], Oracle America, Inc. [DE 415], Level 3 Communications, LLC and its affiliates [DE 270], Qwest Communications Company LLC and Qwest Corporation [DE 273] and AT&T Corp. [DE 387], whose Mission Critical Vendor Claims will be satisfied by treatment to which each has agreed, and which will be set forth in the Confirmation Order. Other objections by parties to Contracts and Real Property Leases being assumed and assigned are separately addressed through contract or lease rejection or agreed resolution. All Mission Critical Vendors having consented to their proposed treatment and thus the Plan treatment being the amount to which they are entitled by such agreements, Class 6 Claims remain unimpaired. Plan § 8.3 is amended to clarify that such Notice was the Assumption Notice referenced in the Plan, and the objection deadline has accordingly expired.

10. Some objections by parties to Contracts and Real Property Leases regarding Cure payments concerned uncertainty over when postpetition accounts payable would be paid in conjunction with the Sale. The Modified Plan and Modified Pivotal

APA confirm that amounts accrued and unbilled postpetition under assumed Contracts and Real Property Leases will be paid by Pivotal GC when invoiced and due in the ordinary course post-Closing.

11. The provision for the Debtors and Newco to engage in discussions about an alternative distribution to Class 7 and Class 10 in lieu of the New Common Stock Pool in Plan §§ 3.1.A.7(a)(ii) and 3.1.B.2(a)(ii) are moot since Newco is not participating in distributions under the Plan. Other provisions describing treatment if Newco acquires the Debtors are likewise moot.

12. Plan § 3.1(B)(2)(a) is modified such that if the Reorganization Election is made, the Debtors' Parent Interests may not be cancelled, if acquired by Pivotal GC by direct purchase of the equity interests of Capital Growth Systems, Inc. and/or one or more of its subsidiaries or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of Capital Growth Systems, Inc. or one or more of its subsidiaries into any form of entity under the laws of any state, or otherwise in accordance with the Reorganization Election option in the Plan. The Debtors' Parent Interests may alternatively be extinguished and new shares issued to the Purchaser as a method of implementing a Reorganization Election. In any event, the rights, claims and interests of current shareholders are extinguished and discharged.

13. Conforming modifications to the Plan are made in multiple locations to clarify that a Reorganization Election may be made before the Effective Date, and that the Reorganized Debtors may then undertake various actions instead of the Liquidating Debtors.

14. Pivotal GC's election with respect to Intercompany Claims, in accordance with Plan § 3.1.A.8, shall be specified by notice filed with the Court before the Effective Date.

15. In accordance with Plan § 3.1.B.1, Pivotal GC's election with respect to

cancellation or transfer of Debtors' equity interest in Magenta shall be specified by notice filed with the Court before the Effective Date.

16. Plan §§ 5.1(c) and 12.6 further describing Restructuring Options are modified to confirm that the acquisition of the Purchased Assets may be accomplished indirectly, and that the form of the acquisition may be an acquisition of the equity interests of Capital Growth Systems, Inc. or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such equity interests) by direct purchase of such equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state.

17. The right of the Liquidating Debtors to assert Causes of Action for the purpose of asserting defenses against Claims in Plan § 5.4(c) and to object to Claims in Plan § 7.1 are restricted not only with respect to Mission Critical Vendors, but also restricted as to counterparties to contracts assumed and assigned to Pivotal GC under the Pivotal APA, customers of the Business, and any other party determined by Pivotal GC in its sole discretion to be important to the operation of the Business, and designated by Pivotal GC prior to the Closing.

18. Plan § 5.7, providing that except as otherwise provided in the Plan, on the Effective Date all agreements, instruments and other documents evidencing any Claim against or Interest in a Debtor (other than subsidiary Debtors' interests) will be deemed discharged and of no force or effect against the Debtors, Purchaser or Assets, and that the holders of them will have no rights arising from or relating to such instruments, securities and other documentation against the Debtors, Purchaser or Assets, is amended to add a proviso as follows: provided, however, that Pivotal GC as successor holder of the Pre-Petition Debentures and DIP Lenders shall continue to hold and may exercise its rights and remedies as a secured creditor with respect to Magenta assets and/or equity interests.

19. Plan § 6.1 is modified to clarify that Cure payments on assumed Contracts and Real Property Leases on the Effective Date are made by the Debtors (whether Liquidating Debtors or Reorganized Debtors) in accordance with the Pivotal GC APA. Any ongoing payments of Cure obligations under agreements with counter-parties to such contracts will be made by the Purchaser.

20. Plan § 7.1 is clarified to confirm responsibility for claims objections will be held by the Reorganized Debtors if a Reorganization Election is made.

21. Plan § 8.1 is modified to confirm that assignment of post-petition contracts and leases of the Debtors to the Purchaser is approved, along with pre-petition executory contracts and unexpired leases that are assumed and assigned.

22. Plan § 10.10 is expanded to clarify that the Purchaser has no successor liability except with respect to the Assumed Liabilities, even if the Reorganization Election is made. Although the Purchaser will then be the successor to the Debtors for regulatory and operational purposes, all Claims and liabilities of the Debtors and their bankruptcy estates through the Closing Date and all rights, Claims and Interests in the equity securities of the Debtors, except for the Assumed Liabilities, are still discharged under the Plan, and the Purchaser will have no Successor Liabilities under the Reorganization Election except to the extent of the Assumed Liabilities.

23. Plan § 12.3 is modified to confirm that any new equity securities that are issued to Purchaser through any form of Reorganization Election option in the Plan will be exempt from registration under securities laws.

B. Modifications to Pivotal GC's Asset Purchase Agreement

1. The Modified Pivotal APA clarifies that the acquisition may take the form of a Reorganization Election (the Plan terminology), called an Alternative Transaction in the Debtors' form of APA from which the Pivotal APA was drafted, and sets forth the means to accomplish such a transaction. The election to acquire the Purchased Assets through acquiring Shares in the parent Debtor company, Capital Growth Systems, Inc. d/b/a Global Capacity Group, Inc., a Florida corporation, will be made prior to the Closing (which is also the Effective Date of the Plan).

2. The Purchase Price is modified to a total of \$28,643,000 plus assumption of Assumed Liabilities. It includes a credit bid of \$9 million in Pre-Petition Debenture Secured Claims. The Purchase Price retains the components of the previous Pivotal APA, but most Administrative Expense amounts are paid through the DIP Facility, and Professional Fee amounts reflect Pivotal GC's understanding of amounts the Debtors have concluded are reasonable and expect to be finally approved by the Court. Thus, there is a "Fee Payment Cap" of \$1,500,000 on the aggregate amount of Professional Fees, U.S. Trustee Fees and Wind Down Costs for administering the remainder of the case. The Wind Down Budget does not contemplate litigation to determine Claims and Interest amounts or the costs of Distributions to holders of Claims and Interests, because no Distributions will be made to holders of Claims and Interests in Classes 7 and 10, and does not contemplate pursuit of Avoidance Actions. The Modified Pivotal APA provides that in the sole discretion of Pivotal GC, advances of the Fee Payment Cap may be made prior to the Sale Closing (expected to be the Plan Effective Date), but any such advances will be advances of the Purchase Price and reduce, dollar for dollar, the Fee Payment Cap. Any such advances would be advances of the Sale Facility, and reduce the amount of the Sale Facility to be advanced at the Sale Closing.

3. The Modified Pivotal APA provides that the acquisition is made by

Pivotal GC as successor to the Debenture Holders and DIP Lenders, and will be accomplished by exercising credit bidding rights. The previous Pivotal APA provided that Pivotal GC would provide Replacement DIP Financing, as required by the Bidding Procedures approved by the Court. The current DIP Facility will be increased as necessary as a Sale Facility to provide the Exit Financing Requirements under the Bidding Procedures, and the term current DIP Facility continues in effect in lieu of a Replacement DIP Facility, since it has already been acquired by Pivotal GC.

4. The Committee has contended that the Debenture Holders' liens in certain bank deposit accounts holding \$1,601,759 ("Deposit Account Amount") as of the petition filing date were not perfected. [Adv. Proc. No. 10-56165 (PJWS) DE 1]. Accordingly, the Committee asserts that the Debenture Holders' liens may not be credit bid in the Deposit Account Amount, and if a Sale results in proceeds in excess of amounts owed under the DIP Facility, proceeds equal to the Deposit Account Amount will be property of the Debtors' estates not subject to the liens or claims of the Prepetition Debenture Lenders. The Modified Pivotal APA clarifies that, as contemplated in the previous version of the Pivotal APA, the Debtors/Sellers will allocate the Purchase Price as set forth in the Plan, with Administrative Expense Claims (including Professional Fee Claims) and Cure Amounts first paid by using any funds deemed not to collateralize the Pre-Petition Facility. The Cure Amounts and Administrative Expense Claims exceed the Deposit Account Amount, mooting the Committee's contentions regarding security interest perfection.

5. The list of employees and their compensation and benefits is now to be provided to Pivotal GC as Buyer without publicly disclosing is as Schedule 5.19.

6. The deadline for entry of the orders approving the Sale and Plan Confirmation is February 1, 2011, which is expected to provide sufficient time for entry of the orders given the expected lack of objections and the January 26, 2011 hearing currently scheduled.

7. Schedule 2.1(b) listing Real Property Leases to be assumed is modified by deleting the following leases, which are to be rejected as of specified dates, and accordingly are included on Schedule 2.2(e):

- ABN AMRO Bank N.V. – Agreement of Sublease for office space at 49 E 52nd Street, 7th Floor, New York, NY (effective February 28, 2011)
- Orbitz, LLC – Agreement of Sublease for office space at 200 S Wacker Drive, 16th Floor, Chicago, IL (effective April 30, 2011)
- Global Capacity Direct, LLC – Agreement of Sublease to Vanco US, LLC for office space at 200 S Wacker Drive, Suite 1600, Chicago, IL (effective April 30, 2011)
- Paeth Properties – Lease Agreement for office space at 399 Wall Street, Unit B, Glendale Heights, IL (effective immediately)

8. Schedule 5.10 deletes any reference to Capstone. An acquisition by the Pre-Petition Debenture Holders (including as DIP Lenders) is excepted from any Capstone Transaction Fee, and Pivotal GC is acquiring the Assets as the successor to and exercising credit bidding rights under the Pre-Petition Debentures and DIP Facility.

C. Notice of Withdrawal of Objections and Vote for the Modified Plan

Pivotal GC, as successor to the Pre-Petition Debenture Lenders and DIP Lenders, withdraws (a) the Reservation of Rights and Statement of Stalking Horse Bidder in Response to Debtors' Purported Notice of Termination of Stalking Horse Bidder Status filed by Global Acquisition Newco Corporation [DE 300] and (b) the Objection of Prepetition Debenture Holders, Tranche B DIP Lenders and Stalking Horse Bidder to Debtors' Motion to Approve Debtors' Selection of the Bid of Pivotal Global Capacity LLC as the Qualifying Bid for the Purchase of Substantially all of the Debtors' Assets Under or in Conjunction with its Plan of Reorganization and Consummation of the Sale Transaction with Pivotal Global Capacity LLC [DE 419].

As successor to the Pre-Petition Debenture Lenders, whose Plan treatment is set forth in Classes 1-5 of the Modified Plan, Pivotal GC votes in favor of the Modified Plan.

RESPECTFULLY SUBMITTED this 13th day of January 2011.

**WOMBLE CARLYLE SANDRIDGE
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: § Chapter 11
§ (Jointly Administered)
GLOBAL CAPACITY HOLDCO, LLC, §
et al.¹ § Case No. 10-12302 (PJW)
§
Debtors. §
§
§

**JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR GLOBAL CAPACITY
HOLDCO, LLC AND ITS FILED AFFILIATES DATED AS OF AUGUST 11, 2010, AND
MODIFIED AS OF JANUARY -, 2011**

Nothing contained herein shall constitute an offer, acceptance or a legally binding obligation of the Debtors or any other party in interest unless and until this Plan is approved by the Bankruptcy Court and other customary conditions are met. This Plan is not an offer with respect to any securities. This is not a solicitation of acceptances or rejections of the Plan. Acceptances or rejections with respect to this Plan may not be solicited until a disclosure statement has been approved by the United States Bankruptcy Court for the District of Delaware. Such a solicitation will only be made in compliance with applicable provisions of securities and/or bankruptcy laws. **YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE (INCLUDING IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES) PRIOR TO THE APPROVAL OF THIS PLAN BY THE BANKRUPTCY COURT.**

Dated: January 13 2011

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Local Counsel for Debtors and

¹ The Debtors in these cases, along with their case numbers, addresses, and the last four digits of each Debtor's federal tax identification number, are: Global Capacity Holdco, LLC, 200 S. Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12302) (8858); Global Capacity Group, Inc., 730 North Post Oak Road, Houston, TX 77024 (10-12303) (0073); 20/20 Technologies, Inc., 200 South Wacker, Suite 1650, Chicago, IL 60606 (10-12304) (5612); Centrepath, Inc., 275 Winter Street, Waltham, MA 02451 (10-12305) (9034); Capital Growth Systems, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12306) (3505); Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12307) (1970); FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12308) (7892); Nexvu Technologies, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12309) (4626); Capital Growth Acquisition, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12311) (4116); and 20/20 Technologies I, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12310) (5514).

INTRODUCTION²

Global Capacity Holdco, LLC, Global Capacity Group, Inc., 20/20 Technologies, Inc., Centrepath, Inc., Capital Growth Systems, Inc., Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), FNS 2007, Inc. (fka Fronrunner Network Systems, Corp.), Nexvu Technologies, LLC, Capital Growth Acquisition, Inc., and 20/20 Technologies I, LLC, Debtors and Debtors in possession in these bankruptcy cases under chapter 11 of the Bankruptcy Code, propose the following Joint Chapter 11 Plan (“Plan”) with respect to each of their Bankruptcy Cases. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, risk factors, a summary and analysis of this Plan, and certain related matters including, among other things, certain tax matters, the sale or disposition of the Debtors’ assets and the consideration to be issued and/or distributed under this Plan.

All Persons are encouraged to read the Plan and the Disclosure Statement and their respective exhibits in their entirety before voting to accept or reject the Plan. No materials other than the Disclosure Statement and the respective exhibits attached thereto and referenced therein have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

ARTICLE I

DEFINITIONS AND INTERPRETATION

A. Definitions.

The following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural):

1.1 ***Administrative Expense Claim*** means a claim for costs and expenses of administration of the Bankruptcy Cases under section 503(b) (including “substantial contribution” claims under section 503(b)(3) and (4)) of the Bankruptcy Code entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code.

1.2 ***Administrative Expense Claims Bar Date*** means the deadline for filing an Administrative Expense Claim established pursuant to Section 2.1 of this Plan or any other order of the Bankruptcy Court.

1.3 ***Allowed*** shall mean, with respect to any Claim against or Interest in any Debtor, a Claim or Interest (a) proof of which is timely Filed (or by order of the Bankruptcy Court or as otherwise provided herein is not required to be Filed), (b) that is listed by such Debtor in its Schedules as liquidated in amount, non-disputed and non-contingent and for which no proof of claim has been Filed, or (c) expressly allowed pursuant to this Plan or any Final Order of the Bankruptcy Court; and, in each case with respect to (a) and (b) above, either (i) no objection to

² All capitalized terms in the Introduction used but not defined in the Introduction have the meanings set forth in Article I herein.

its allowance, amount, or classification (or an amendment of the Schedules with respect thereto) has been interposed within the applicable period for filing same fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or (ii) such objection (or an amendment of the Schedules with respect thereto), if so interposed, has been determined and fixed by a Final Order (but only to the extent so determined and fixed and not where fixed and allowed solely for purposes of voting to accept or reject the Plan). Claims that are not Allowed or are disallowed by Final Order or otherwise, including those disallowed under section 502(d) of the Bankruptcy Code, shall not be Allowed Claims.

1.4 **Allowed Claim or Allowed Interest** means a Claim or Interest to the extent that it has been Allowed.

1.5 **APA** means either: (i) the Asset Purchase Agreement with Newco [**inapplicable under sale to Pivotal Global Capacity, LLC**]; or (ii) any other asset purchase agreement(s) that the Debtors may execute with a Person that submits the highest or otherwise best bid for the Assets, which the Debtors have determined to be the Asset Purchase Agreement submitted by Pivotal Global Capacity, LLP pursuant to the Auction and thereafter modified and filed with the Court on January 12, 2011, and, with respect to both (i) and (ii), is approved by order of the Bankruptcy Court and consummated.

1.6 **Acquired Assets** means all Assets acquired by Purchaser pursuant to the APA.

1.7 **Assets** means all of the right, title and interest of the Debtors pursuant to section 541 of the Bankruptcy Code in and to property or Interests of whatever type or nature (real, personal, mixed, intellectual, tangible or intangible), including Causes of Action and all other property of the Debtors.

1.8 **Assumed Liabilities** means any liabilities of the Debtors, including any executory contracts, assumed by a Purchaser in accordance with the APA or order of the Bankruptcy Court and includes, for Pivotal Global Capacity LLC as Purchaser, postpetition accrued and unbilled (a) obligations under assumed Contracts and Real Property Leases and (b) Taxes of Governmental Units which will be paid when invoiced and due in the ordinary course after Closing.

1.9 **Auction** means the auction for the Assets to be held in accordance with the Auction Sale Order, as necessary.

1.10 **Auction Sale Order or Sale Order** means the order entered on the Bid Procedures Motion.

1.11 **August 2009 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the pre-petition variable rate secured convertible debentures of Capital Growth Systems, Inc. issued on August 27, 2009.

1.12 **August Debenture Agent** means Aequitas Capital Management, Inc. or its successor.

1.13 **August Debenture Distribution** means, for each holder of an August Debenture Secured Claim on the Effective Date, (i) in the event that Newco is the Purchaser, the Series B Preferred Stock Distribution [**inapplicable under sale to Pivotal Global Capacity, LLC**]; and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder.

1.14 **August Debenture Secured Claims** means any Secured Claims of any holder of an August 2009 Debenture arising under the August 2009 Debentures and related Pre-Petition Debenture Agreements.

1.15 **Avoidance Actions** means all of the Debtors' and the Estates' rights and claims under sections 547 through 553 of the Bankruptcy Code, inclusive, or under any similar or related state or federal statute or common law, whether or not an action is initiated before or after the Effective Date.

1.16 **Ballot** means the form to be distributed with the Disclosure Statement to each holder of an Impaired Claim or Impaired Interest on which the holder is to indicate acceptance or rejection of the Plan.

1.17 **Balloting Deadline** means the date and time, as set by an order of the Bankruptcy Court or in the Disclosure Statement, by which all Ballots must be received in order to be counted for purposes of voting on the Plan, as such date may be extended by an order of the Bankruptcy Court.

1.18 **Bankruptcy Cases** or **Chapter 11 Cases** means these cases for relief filed by the Debtors under Chapter 11 of the Bankruptcy Code, which are pending before the Bankruptcy Court and have been consolidated for joint administration as Case No. 10-12302 (Jointly Administered).

1.19 **Bankruptcy Code** means Title 11 of the United States Code, or the Bankruptcy Reform Act of 1978, as amended.

1.20 **Bankruptcy Court** means the United States Bankruptcy Court for the District of Delaware, or, to the extent applicable, any other court exercising competent jurisdiction over the Bankruptcy Cases or any proceeding therein.

1.21 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Bankruptcy Cases, and any Local Rules of the Bankruptcy Court.

1.22 **Bar Date** means the deadline for filing proofs of Claim or Interest that arose or are deemed to arise on or before the Petition Date, as established by the Plan or other order of the Bankruptcy Court.

1.23 **Bid Procedures** means the bid procedures for the Sale, as set forth in the Auction Sale Order.

1.24 **Bid Procedures Motion** means the motion of the Debtors seeking an order: (i) approving the Bid Procedures with respect to the sale of the Assets; (ii) approving the Stalking Horse Bidder and bid protections with respect to a Stalking Horse Bidder; (iii) approving the assumption, assignment and/or transfer procedures with respect to executory contracts or unexpired leases of the Debtors; and (iv) as may be necessary, scheduling an auction and approving the form and manner of notice thereof (with the Bid Procedures Motion and items (i) through (iv) being in form and substance reasonably acceptable to the Participating Debenture Holders).

1.25 **Budget** means the budget annexed to the DIP Facility as Exhibit A thereto.

1.26 **Business Day** means any day other than a Saturday, Sunday or federal holiday in the United States.

1.27 **Cash** means legal tender of the United States of America.

1.28 **Causes of Action** means, without limitation, any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, debts, sums of money, damages, judgments, claims and demands, actions, defenses, offsets, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whatsoever, whether known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or tort, in law, equity or otherwise, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable in favor of the Debtors, their Estates or the Liquidating Debtors or Reorganized Debtors, as applicable. For avoidance of doubt, Causes of Action include, but are in no way limited to, claims or rights to (a) damages, (b) the recovery of monies, (c) lien avoidance, subordination, surcharge, recharacterization, rights of setoff, counterclaim or recoupment, and claims on contracts or for breaches of duties imposed by law, (d) tax refunds, (e) injunctive, equitable, or other relief, (f) claims pursuant to section 362 of the Bankruptcy Code, (g) such claims and defenses as fraud, mistake, duress, and usury, (h) Avoidance Actions, (i) Retained Causes of Action, and (j) all causes of action that may be directly or derivatively asserted on behalf of the Debtors, their Estates, or the Liquidating Debtors or Reorganized Debtors, as applicable.

1.29 **Claim** shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

1.30 **Class** means a category of holders of Claims or Interests classified together pursuant to section 1123(a)(11) of the Bankruptcy Code.

1.31 **Confirmation Date** means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

1.32 **Confirmation Hearing** means the hearing held pursuant to section 1128(a) of the Bankruptcy Code at which the Bankruptcy Court considers confirmation of the Plan, including any continuances thereof.

1.33 **Confirmation Objection Deadline** means the first deadline set for the filing of objections to the confirmation of the Plan.

1.34 **Confirmation Order** means the order of the Bankruptcy Court that confirms the Plan.

1.35 **Credit Bid** means a bid, pursuant to section 363(k) of the Bankruptcy Code, for substantially all of the Assets by Pivotal Global Capacity, LLC as assignee and successor to the DIP Lenders and the Pre-Petition Debenture Lenders, of DIP Claims, DIP Claims and Pre-Petition Debenture Claims, to the extent designated by Pivotal Global Capacity, LLC in the APA.

1.36 **Creditors' Committee** means any statutory committee of unsecured creditors appointed in the Bankruptcy Cases in accordance with section 1102 of the Bankruptcy Code, as the same may be reconstituted from time to time.

1.37 **Cure Costs** means the amount required pursuant to section 365(b) of the Bankruptcy Code to cure any defaults in an executory contract or unexpired lease to be assumed by the Debtors and assigned to Purchaser, as determined by a Final Order of the Bankruptcy Court.

1.38 **Cure Dispute Hearing** means a hearing before the Bankruptcy Court to resolve the amount of any Cure Cost.

1.39 **Debtors** means Global Capacity Holdco, LLC, Global Capacity Group, Inc., 20/20 Technologies, Inc., Centrepath, Inc., Capital Growth Systems, Inc., Global Capacity Direct, LLC fka Vanco Direct USA, LLC, FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), NEXVU Technologies, LLC, 2020 Technologies I, LLC, and Capital Growth Acquisition, Inc.

1.40 **Debtors in Possession** means the Debtors between the Petition Date and the Effective Date.

1.41 **Debtors' Parent** means Capital Growth Systems, Inc.

1.42 **Debtors' Parent Interests** means any "equity security" (as defined in Section 101(16) of the Bankruptcy Code) in Debtors' Parent and, for purposes of illustration and not limitation, shall include all warrants, options, convertible debentures, and shares of stock issued or outstanding in or by the Debtors' Parent as of the Effective Date.

1.43 **Debtors' Retained Causes of Action** means those Retained Causes of Action, which are retained by the Reorganized Debtors or the Liquidating Debtors, as applicable, and are not transferred to the Purchaser under the APA.

1.44 **Deficiency Claim** means the unsecured deficiency claim of a holder of a Secured Claim determined pursuant to 11 U.S.C. §506(a) or as provided in this Plan.

1.45 **DIP Claims** means all obligations of the Debtors arising out of or in connection with the DIP Facility (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order).

1.46 **DIP Facility** means that certain Debtor in Possession Loan and Security Agreement by and among the Debtors, as the borrowers, and the DIP Lenders, as amended from time to time and the Loan Documents (as defined therein).

1.47 **DIP Lenders** means Pivotal Global Capacity, LLC as assignee and successor to the Tranche A DIP Lender and the Tranche B DIP Lenders.

1.48 **Disallowed Claim** means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order or a settlement, (b) a Claim or any portion thereof that is Scheduled at zero or as contingent, disputed, or unliquidated and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) a Claim or any portion thereof that is not Scheduled and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

1.49 **Disallowed Interest** means an Interest or any portion thereof that has been disallowed by a Final Order or by a settlement between the holder thereof and the Debtors or, if after the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable.

1.50 **Disbursing Agent** means, for purposes of making distributions under the Plan, the Liquidating Debtors or Reorganized Debtors, as applicable, or the Plan Administrator.

1.51 **Disclosure Statement** means the Disclosure Statement for the Debtors to accompany the Plan, as modified or amended, approved by the Bankruptcy Court.

1.52 **Disclosure Statement Order** means an order of the Bankruptcy Court (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving the Form and Manner of Solicitation; (B) Approving the Form and Manner of Notice of the Confirmation Hearing; (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages; (D) Approving Form of Ballots; (E) Establishing Deadline for Receipt of Ballots; and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections to (A) Confirmation of the Plan; and (B) Proposed Cure Amounts Related to Contracts and Leases Assumed Under the Plan; and (IV) Granting Related Relief entered by the Bankruptcy Court on September 23, 2010.

1.53 **Disputed Claim or Disputed Interest**, means any Claim or Interest, that is not either an Allowed Claim or a Disallowed Claim, or an Allowed Interest or a Disallowed Interest, as the case may be. In the event that any part of a Claim or Interest is disputed, such Claim or Interest in its entirety shall be deemed to constitute a Disputed Claim or Disputed Interest for purposes of distribution under this Plan unless (a) a Final Order has been entered providing otherwise or (b) as otherwise agreed between the holder thereof and the Debtors or, if after the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable. Without limiting any of the foregoing, a Claim or Interest that is the subject of a pending objection, motion,

complaint, counterclaim, setoff, Avoidance Action, litigation claim or other defense, or any other proceeding seeking to disallow, subordinate or estimate such Claim, shall be deemed to constitute a Disputed Claim or Disputed Interest, as the case may be.

1.54 ***Distribution Date*** means: (a) the Initial Distribution Date; (b) any Interim Distribution Date; or (c) the Final Distribution Date, as the context requires.

1.55 ***Distribution Record Date*** means, with respect to all Classes, the third (3rd) Business Day after the date the Confirmation Order is entered by the Bankruptcy Court or such other date as shall be established by the Bankruptcy Court in (a) the Confirmation Order or, (b) upon request of the Debtors or the Liquidating Debtors or Reorganized Debtors, as applicable, a separate order of the Bankruptcy Court.

1.56 ***Effective Date*** means the first Business Day on which all conditions to the Effective Date set forth in Section 9.2 hereof have been satisfied or waived (or will be satisfied contemporaneously with or immediately upon the occurrence of the Effective Date) and no stay of the effectiveness of the Confirmation Order is in effect.

1.57 ***Entity*** means an individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code) or any political subdivision thereof, or other person.

1.58 ***Estates*** means the estates created in the Bankruptcy Cases under section 541 of the Bankruptcy Code.

1.59 ***Exit Capital Requirements Plan Funding*** means funding (a) by Newco in accordance with Schedule 2 of the Plan Support Agreement (attached hereto as Exhibit A) **[inapplicable under sale to Pivotal Global Capacity, LLC]** or, (b) if a Restructuring Election is made by Newco, in an amount needed (i) to pay Allowed Administrative Expense Claims, Tranche A DIP Facility Claims, Allowed Fee Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Cure Costs, Assumed Liabilities **[inapplicable under sale to Pivotal Global Capacity, LLC]**, or (c), with respect to a Purchaser other than Newco **[applicable under sale to Pivotal Global Capacity, LLC]**, to pay Allowed Administrative Expense Claims in Agreed Amounts including Allowed Fee Claims in Agreed Amounts within the aggregate amount provided for such purposes in the APA, Tranche A DIP Facility Claims, Tranche B DIP Facility Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Cure Costs, Assumed Liabilities; and (ii) to provide a sufficient reserve for the payment of Wind Down Costs in accordance with the Wind Down Budget, whether effected as a transfer of Assets or under a Restructuring Election.

1.60 ***Fee Claim*** means a Claim by a Professional for compensation, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) (excluding any fees or expenses under sections 503(b)(3) or (4)) or 1103(a) of the Bankruptcy Code in connection with the Bankruptcy Cases. For the avoidance of doubt, fees or expenses sought under sections 503(b)(3) or (4) or payable under section 506(b) are not Fee Claims.

1.60a **Fee Payment Cap** shall mean the sum of \$1,500,000 payable at the Closing (reduced by any pre-Closing discretionary advances, per Section 2.3(b)) by Pivotal Global Capacity, LLC to be used to satisfy Fee Claims, U.S. Trustee Fees for the post-Closing period and the distributions made in connection with the Closing and Wind Down Budget obligations.

1.61 **File or Filed** mean filed with the Bankruptcy Court in the Bankruptcy Cases, as reflected on the official docket of the Bankruptcy Court for the Bankruptcy Cases.

1.62 **Final DIP Financing Order** means the Final Order Granting Emergency Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) and (2), and 364(e), Fed.R.Bankr.P. 2002, 4001, and 9014: (I) Authorizing Debtors to Obtain Postpetition Financing on Superpriority and Secured Basis, (II) Permitting the Use of Cash Collateral, (III) Granting Interim Relief, And (IV) Scheduling a Final Hearing Under Fed.R.Bankr.P. 4001(c) [DE 125].

1.63 **Final Distribution Date** means the first Business Day twenty (20) days (or such longer or shorter period as may be reasonably determined by the Liquidating Debtors or Reorganized Debtors, as applicable) after the date on which all Disputed Claims have been resolved by Final Order and all Assets have been liquidated or otherwise disposed of in accordance with the Plan and on which a final Plan Distribution is made to relevant Allowed Claim or Allowed Interest holders as required under this Plan.

1.64 **Final Order** means an order or judgment of the Bankruptcy Court or other applicable court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall have been affirmed by the highest court to which such order or judgment was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or motion for reargument or rehearing shall have expired, with no further appeal, petition for certiorari or motion for reargument or rehearing pending; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule of the Bankruptcy Rules, may be filed with respect to such order or judgment shall not render such order or judgment not to be a Final Order.

1.65 **Fully-Diluted Basis** means as if all shares of the Series C Preferred Stock, the Series B Preferred Stock and the Series A Preferred Stock were converted to New Common Stock in accordance with the respective terms of such preferred stock.

1.66 **Impaired** means a Claim or Interest or a Class of Claims or a Class of Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.67 **Initial Distribution Date** means the first Business Day three (3) business days after the Effective Date, or such longer or shorter period as may be reasonably determined by the

Liquidating Debtors or Reorganized Debtors, as applicable, to make initial Plan Distributions under the Plan.

1.68 **Interest** means any and all “equity securities” (as defined in section 101(16) of the Bankruptcy Code) in a Debtor and, for purposes of illustration and not limitation, shall include all warrants, options, convertible debentures, and shares of stock issued or outstanding in or by any Debtor as of the Petition Date.

1.69 **Intercompany Claims** means any Claim that is held or asserted by a Debtor against another Debtor.

1.70 **Interim DIP Financing Order** means the Interim Order Granting Emergency Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) and (2), and 364(e), Fed.R.Bankr.P. 2002, 4001, and 9014: (I) Authorizing Debtors to Obtain Postpetition Financing on Superpriority and Secured Basis, (II) Permitting the Use of Cash Collateral, (III) Granting Interim Relief, And (IV) Scheduling a Final Hearing Under Fed.R.Bankr.P. 4001(c) [P-22].

1.71 **Interim Distribution Date** means any date, other than the Final Distribution Date, after the Initial Distribution Date, on which the Liquidating Debtors or Reorganized Debtors, as applicable, determine that an interim distribution should be made to or on account of holders of Allowed Claims or Allowed Interests, in light of, *inter alia*, resolutions of Disputed Claims or Disputed Interests, and the administrative costs of such a distribution.

1.72 **July 2009 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about July 31, 2009 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto, other than the August 2009 Debentures.

1.73 **July Debenture Agent** means Aequitas Capital Management, Inc. (definition no longer applicable) or its successor in interest.

1.74 **July Debenture Distribution** means, for each holder of a July Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series B Preferred Stock Distribution; **[inapplicable under sale to Pivotal Global Capacity, LLC]** and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder **[inapplicable under sale to Pivotal Global Capacity, LLC]**.

1.75 **July Debenture Secured Claims** means any Secured Claims, other than the August Debenture Secured Claims, arising pursuant to that certain Securities Purchase Agreement dated on or about July 31, 2009 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest on the Effective Date.

1.76 **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.77 **Liquidating Debtors** means the Debtors upon and after the Effective Date, which for purposes of the Plan, shall receive the Sales Proceeds for purposes of distribution and

effectuating the Wind Down, and shall operate the Non-Transferred Assets pursuant to the Management Agreement unless the Reorganization Election is made.

1.78 *Management Agreement* means the management agreement (if any) annexed to or otherwise provided for in the APA pursuant to which Purchaser, through the Liquidating Debtors, shall operate the Non-Transferred Assets subsequent to closing on the Sale until such Non-Transferred Assets are transferred to Purchaser.

1.79 *March 2008 Debentures* means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about March 11, 2008 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest on the Effective Date.

1.80 *March Debenture Agent* means Enable Growth Partners LP. (definition no longer applicable) or its successor in interest.

1.81 *March Debenture Distribution* means, for each holder of a March Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series A Preferred Stock Distribution **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder **[inapplicable under sale to Pivotal Global Capacity, LLC]**.

1.82 *March Debenture Secured Claims* means any Secured Claims arising pursuant to that certain Securities Purchase Agreement, dated March 11, 2008, among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest on the Effective Date.

1.83 *Mission Critical Vendor Claims* means all claims to be assumed by Purchaser pursuant to an Exhibit to the APA, including, but not limited to, the utility vendors' claims set forth in the Utility Motion and critical vendors' Claims.

1.84 *Net Cash Sale Proceeds* means the Cash portion of the Sale Proceeds, subject to rights of any Purchaser to Credit Bid, less the Exit Capital Requirement Plan Funding.

1.85 *New Common Stock* means the common stock or other equity securities in Purchaser (or, in the event of a Reorganization Election, the Reorganized Debtor Parent) issued by Newco in accordance with the consummation of the Plan, which shall constitute 100% of the issued and outstanding equity securities of the issuer **[inapplicable under sale to Pivotal Global Capacity, LLC]**.

1.86 *New Common Stock Pool* means ten per cent (10%) of the outstanding shares of the New Common Stock on a Fully Diluted Basis to be transferred by Newco if Newco is the Purchaser, to the Liquidating Debtors for distribution pursuant to the Plan to the holders of Class 7 Allowed Unsecured Claims and Class 10 Interests as provided in the Plan if Newco is the Purchaser **[inapplicable under sale to Pivotal Global Capacity, LLC]**.

1.87 *Newco* means the company formed by the Participating Debenture Holders for the purpose of either purchasing the Assets or, alternatively, acquiring the equity in the Reorganized Debtors, in accordance with this Plan. **Newco is not being formed by Pivotal Global Capacity, LLC as Purchaser, and will not take effect under the Modified Plan.**

1.88 *Non-Transferred Assets* means those Assets (exclusive of Retained Causes of Action) that are not transferred to Purchaser upon closing of the Sale, including, without limitation, (i) pending Purchaser obtaining the requisite telecommunications or other regulatory authorizations from State regulatory agencies and/or consent of State regulatory agencies to the transfer of such Assets or (ii) if an attempted assignment of any contract or lease, without the consent of any other Person party thereto, would constitute a breach thereof or in any way negatively affect the rights of Purchaser (unless the restrictions on assignment would be rendered ineffective pursuant to sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended, or any provision of the Bankruptcy Code), as the assignee of such contract or lease, as the case may be, thereunder.

1.89 *November 2008 Debentures* means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about November 19, 2008 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest.

1.90 *November Debenture Agent* means Midsummer Investment Ltd. (definition no longer applicable) or its successor in interest.

1.91 *November Debenture Distribution* means, for each holder of a November Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series A Preferred Stock Distribution **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder or its successor in interest **[inapplicable under sale to Pivotal Global Capacity, LLC]**.

1.92 *November Debenture Secured Claims* means any Secured Claims arising pursuant to that certain Securities Purchase Agreement dated November 19, 2008 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest.

1.93 *Participating Debenture Holders* means those certain holders of July Debenture Secured Claims, August Debenture Secured Claims, March Debenture Secured Claims, VPP Debenture Secured Claims and November Debenture Secured Claims which participate as DIP Lenders in the DIP Facility **[inapplicable due to acquisition of DIP Facility by Pivotal Global Capacity, LLC]**.

1.94 *Person* means any individual, corporation, partnership, association, indenture trustee, limited liability company, organization, joint stock company, joint venture, estate, trust,

governmental unit or any political subdivision thereof, Interest holder, or any other Entity or organization.

1.95 **Petition Date** means July 23, 2010.

1.96 **Plan** means this plan of reorganization, either in its present form or as it may be altered, amended, or modified from time to time by the Debtors or the Liquidating Debtors or Reorganized Debtors, as applicable, in accordance with the Bankruptcy Code and Bankruptcy Rules.

1.97 **Plan Administrator** means a Person (if any) designated by the Debtors (or any successor thereto appointed pursuant to the Plan) and acceptable to the Purchaser who shall be vested with authority to exercise all rights of the Liquidating Debtors (and the Plan Administrator) if no Reorganization Election is made under the Plan, which for Pivotal Global Capacity, LLC as Purchaser, is Dan Kardatzke.

1.98 **Plan Administrator Expenses** means all actual and necessary costs and expenses incurred on and after the Effective Date in connection with the Wind Down and the administration of the Plan, including, but not limited to, (a) the costs, expenses and legal fees incurred related to: (i) filing and prosecuting objections to Claims; (ii) distributing the Plan Distributions; (iii) performing the duties set forth in the Plan; and (b) all fees payable pursuant to section 1930 of Title 28 of the United States Code.

1.99 **Plan Consideration** means the distributions under the Plan to any holders of Allowed Claims or Allowed Interests entitled to a distribution under this Plan.

1.100 **Plan Distribution** means the payment or distribution under the Plan of the Plan Consideration.

1.101 **Plan Documents** means the documents, other than this Plan, to be executed, delivered, assumed, and/or performed in connection with the consummation of this Plan.

1.102 **Plan Supplement** means the Wind Down Budget. The Plan Supplement will be filed with the Clerk of the Bankruptcy Court in accordance with such deadline established in the Disclosure Statement Order or pursuant to the Plan.

1.103 **Plan Support Agreement** means the agreement made and entered into as of July 22, 2010, by and among the Debtors and certain Pre-Petition Debenture Lenders, including the Participating Debenture Holders, providing, among other things, for the support of the Plan by the parties thereto on the terms and conditions set forth therein. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.104 **Preferred Stock** means the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock.

1.105 **Pre-Petition Debenture Agents** means the July Debenture Agent, the August Debenture Agent, the VPP Debenture Agent, the November Debenture Agent, and the March

Debenture Agent (definition no longer applicable), or, in each case, as applicable, its successor in interest.

1.106 *Pre-Petition Debenture Agreements* means each of the agreements related to (i) the August 2009 Debentures; (ii) the July 2009 Debentures, (iii) the VPP Debentures; (iv) the November 2008 Debentures; and (v) the March Debentures.

1.107 *Pre-Petition Debenture Cash Distribution* means a distribution of the Net Cash Sale Proceeds in the following amounts and order of priority to the extent of such Net Cash Sale Proceeds: **[inapplicable under sale to Pivotal Global Capacity, LLC]**

- (a) first, to the holders of July and August Debenture Secured Claims until such holders have received an aggregate distribution of \$6,000,000 pursuant to this clause (a);
- (b); second, to the holders of VPP, March and November Debenture Secured Claims until such holders have received an aggregate distribution of \$13,750,000 pursuant to this clause (b);
- (c) third, to the holders of Pre-Petition Debenture Claims, 30.8% to the holders of July and August Debenture Secured Claims and 69.2% to the holders of VPP, March and November Debenture Secured Claims, until the holders of July and August Debenture Secured Claims have received payment in full of their Allowed July and August Debenture Secured Claims; and
- (d) fourth, to the holders of VPP, March and November Debenture Secured Claims, until they have received payment in full of their Allowed VPP, March and November Debenture Secured Claims.

All amounts distributed to the holders of July and August Debenture Secured Claims in accordance with the foregoing provisions of this Article 1.107 shall be allocated among the holders of July and August Debenture Secured Claims in proportion to the respective aggregate amounts of their Allowed July and August Debenture Secured Claims. All amounts distributed to the holders of VPP, March and November Debenture Secured Claims in accordance with the foregoing provisions of this Article 1.107 shall be allocated among the holders of VPP, March and November Debenture Secured Claims in proportion to the respective aggregate amounts of their Allowed VPP, March and November Debenture Secured Claims.

1.108 *Pre-Petition Debenture Lenders* means Pivotal Global Capacity, LLC as assignee and successor holder of all rights, title and interests in, to and under (a) the Pre-Petition Debenture Agreements; (b) the following debentures and Secured Claims (collectively, the “Pre-Petition Debentures”): the August 2009 Debentures, August Debenture Secured Claims, the July 2009 Debentures, July Debenture Secured Claims, the March 2008 Debentures, March Debenture Secured Claims, November 2008 Debentures, November Debenture Secured Claims, the VPP 2009 Debentures, VPP Debenture Secured Claims; (c) any registration rights and agreements related thereto; (d) the Pre-Petition Debenture Claims; (e) the Debenture Collateral;

(f) any warrants to purchase Common Stock of the Company issued to the Assignor at the time it purchased any of the Pre-Petition Debentures and any and all interest therein; (g) all orders in the above-captioned cases relating to any of the above (a) through (f); and (h) all documents or instruments relating to any of the above (a) through (f) but excluding (i) any and all rights of the Assignors to indemnification under any of (a) through (h) for any claims asserted or that may hereafter be asserted against any of the Assignors as holders of Pre-Petition Debentures and arising prior to the Effective Date) (all of (a) through (h) but excluding (i) above being referred to herein, collectively, the “Assigned Debentures”).

1.109 ***Pre-Petition Debenture Claims or Prepetition Debenture Obligations*** means all obligations due and owing with respect to the Pre-Petition Debenture Agreements as of the Petition Date, including the July Debenture Secured Claims, August Debenture Secured Claims, VPP Debenture Secured Claims, March Debenture Secured Claims and November Debenture Secured Claims.

1.110 ***Pro Rata Share*** means, with respect to any distribution on account of an Allowed Claim or Allowed Interest, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim or Allowed Interest bears to the aggregate amount of all Allowed Claims or Allowed Interests, as applicable, in such Class.

1.111 ***Priority Claim*** means any Priority Tax Claim or Priority Non-Tax Claim, but only to the extent such Claim is entitled to priority.

1.112 ***Priority Non-Tax Claim*** means any Claim (other than an Administrative Expense Claim, a Fee Claim, a Priority Tax Claim, a Tranche A DIP Facility Claim or a Tranche B DIP Facility Claim) that is entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

1.113 ***Priority Tax Claim*** means any Claim that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

1.114 ***Professional*** means a Person employed in accordance with sections 327 and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code.

1.115 [Deleted as duplicative of “Fee Claim”]

1.116 ***Purchaser*** means either: (i) Newco [**inapplicable under sale to Pivotal Global Capacity, LLC**]; or (ii) such other Person that submits the highest or otherwise best bid for substantially all of the Assets in accordance with the Bid Procedures and with whom the Debtors consummate an APA for the sale of the Acquired Assets under section 363 of the Bankruptcy Code or, alternatively, which acquires the equity in the Reorganized Debtors, which is Pivotal Global Capacity, LLC.

1.117 ***Released Parties*** means the Debtors, the Creditors’ Committee, if any, and its members (solely in their capacity as such), the Participating Debenture Holders, the Pre-Petition Debenture Lenders, the Purchaser, the Pre-Petition Debenture Agents, the Tranche A Lender, the Tranche B Lenders, the Tranche B Agent, the Plan Administrator and the respective current

officers, directors, employees, members, agents, affiliates, advisors, attorneys, accountants, and representatives of each of the foregoing.

1.118 **Retained Causes of Action** means any and all claims and causes of action set forth on Exhibit “B” entitled “Retained Causes of Actions”, attached hereto and made part hereof.

1.119 **Reorganization Election** means the election by Purchaser to effectuate the Sale in accordance with Article 5.1(b) of the Plan through a corporate restructuring of the Debtors which complies with section 1129 of the Bankruptcy Code (and not as an asset sale pursuant to section 363 of the Bankruptcy Code) pursuant to one or more transactions contemplated by Article 5.1(c) of the Plan.

1.120 **Reorganized Debtors** means the Debtors upon and after the Effective Date, in the event that the Plan is amended to provide for the restructuring and continued operation of the Debtors after the Effective Date as provided in Article V of the Plan.

1.121 **Reorganized Debtors’ Parent** means Debtors’ Parent from and after the Effective Date, in the event that the Plan is amended to provide for the restructuring and continued operation of the Debtors after the Effective Date as provided in Section Article V of the Plan.

1.122 **Sale** means the sale or transfer of the Acquired Assets under or in connection with the Plan, any APA, or any other order of the Bankruptcy Court or, alternatively, sale of the equity of the Reorganized Debtors to Purchaser.

1.122a **Sale Facility** means the increase in the DIP Facility on the Sale Closing Date to provide the Exit Capital Requirements Plan Funding under the Bid Procedures in amounts set forth in the APA.

1.123 **Sale Order** means an order of the Bankruptcy Court authorizing and approving the Sale.

1.124 **Sale Proceeds** means the consideration for the sale or transfer of the Acquired Assets of the Debtors pursuant to the APA.

1.125 **Scheduled** means set forth, stated or listed on the Schedules.

1.126 **Schedules** means the Schedules of Assets and Liabilities and List of Equity Security Holders Filed by the Debtors under the Bankruptcy Rules, as the same have been or may be amended from time to time before the Effective Date.

1.127 **Secured Claim** means any claim that is secured by a valid, perfected and unavoidable lien on property in which the Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the claimholder’s interest in the Estates’ interest in such property or to the extent of the amount subject to setoff, as applicable, and determined under section 506 of the Bankruptcy Code or as provided in this Plan.

1.128 **Series A Holder** means the holder of a VPP Debenture Secured Claim, March Debenture Secured Claim or November Debenture Secured Claim, currently Pivotal Global Capacity, LLC.

1.129 **Series A Preferred Stock** means participating convertible preferred stock of Newco (but not the Reorganized Debtor Parent or the Purchaser, if applicable) that (i) will have an aggregate liquidation preference of \$6,000,000, senior to all other capital stock of the issuer other than Series C Preferred Stock and Series B Preferred Stock, (ii) will be convertible, at the option of the respective holders thereof as to the shares thereof held by each of them, into shares of New Common Stock representing in the aggregate up to 13.5% of the issued and outstanding New Common Stock on a Fully-Diluted Basis, subject to dilution by any exit financing, and (iii) will entitle the holders thereof to voting rights on the basis of one vote for each share of New Common Stock into which the Series A Preferred Stock is convertible. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.130 **Series A Preferred Stock Distribution** means a distribution in the event Newco is the Purchaser based upon the following formula: $N = T \times (\text{PrefAClaim} / \text{TotPrefAClaims})$, where **N** = the number of shares of Series A Preferred Stock to be issued to the Series A Holder, **T** = the total number of shares of Series A Preferred Stock to be issued, **PrefAClaim** = Claim x [10% + 90% (Sub/ProRata)], **TotPrefAClaims** = the sum of all the PrefAClaim amounts for all of the Series A Holders, **Sub** = the amount of the Series A Holder's subscription to the Tranche B Loan, **ProRata** = the entire amount of the Tranche B Loan multiplied by (the aggregate amount of the Series A Holder's allowed VPP, March, November, July and August Debenture Secured Claims divided by the total amount of all allowed VPP, March, November, July and August Debenture Secured Claims), and **Claim** = the aggregate amount of the Series A Holder's allowed VPP, March and November Debenture Secured Claims. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.131 **Series B Holder** means a holder of a July Debenture Secured Claim or an August Debenture Secured Claim, currently Pivotal Global Capacity, LLC.

1.132 **Series B Preferred Stock** means participating convertible preferred stock of Newco (or the Reorganized Debtor Parent, as applicable) that (i) will have an aggregate liquidation preference of \$6,000,000, senior to all other capital stock of the issuer other than Series C Preferred Stock, (ii) will be convertible, at the option of the respective holders thereof as to the shares thereof held by each of them, into shares of New Common Stock representing in the aggregate up to 13.5% of the issued and outstanding New Common Stock on a Fully-Diluted Basis, subject to dilution by any exit financing, and (iii) will entitle the holders thereof to voting rights on the basis of one vote for each share of New Common Stock into which the Series B Preferred Stock is convertible. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.133 **Series B Preferred Stock Distribution** means a distribution based upon the following formula: $N = T \times (\text{PrefBClaim} / \text{TotPrefBClaims})$, where **N** = the number of shares of Series B Preferred Stock to be issued to the Series B Holder, **T** = the total number of shares of Series B Preferred Stock to be issued, **PrefBClaim** = Claim x [80% + 20% (Sub/ProRata)], **TotPrefBClaims** = the sum of all the PrefBClaim amounts for all of the Series B Holders, **Sub** = the amount of the Series B Holder's subscription to the Tranche B Loan, **ProRata** = the entire

amount of the Tranche B Loan multiplied by (the aggregate amount of the Series B Holder's allowed VPP, March, November, July and August Debenture Secured Claims divided by the total amount of all allowed VPP, March, November, July and August Debenture Secured Claims), and **Claim** = the aggregate amount of the Series B Holder's allowed July and August Debenture Secured Claims. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.134 ***Series C Preferred Stock*** means participating convertible preferred stock of Newco (or the Reorganized Debtor Parent, as applicable) that (i) will have liquidation preferences, senior to all other capital stock of the issuer, equal in the aggregate to the total amount of the Tranche B DIP Obligations (including all outstanding principal of and accrued and unpaid interest on the Tranche B Loan), (ii) will be convertible, at the option of the respective holders thereof as to the shares thereof held by each of them, into shares of New Common Stock representing in the aggregate up to 63% of the issued and outstanding New Common Stock on a Fully-Diluted Basis, subject to dilution by any exit financing, and (iii) will entitle the holders thereof to voting rights on the basis of one vote for each share of New Common Stock into which the Series C Preferred Stock is convertible. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.135 ***Stalking Horse Agreement*** means one or more asset purchase agreements (as may be amended, modified, restated or supplemented from time to time) by and among the Debtors, as sellers, and the Stalking Horse Bidder, as buyer, which provides, among other things, for the sale or transfer of the Acquired Assets. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.136 ***Stalking Horse Bidder*** means Newco or as otherwise defined in the Bid Procedures. **[inapplicable under sale to Pivotal Global Capacity, LLC]**

1.137 ***Subsidiary Debtors' Interests*** means "equity security" (as defined in Section 101(16) of the Bankruptcy Code) interests in any Debtor, other than Debtors' Parent.

1.138 ***Tranche A DIP Facility Claims*** means all obligations arising out of or in connection with the Tranche A Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order), now held by Pivotal Global Capacity, LLC.

1.139 ***Tranche A DIP Lender*** means Downtown CP-CGSY, LLC or its successor in interest, now Pivotal Global Capacity, LLC.

1.140 ***Tranche A Loan*** means that portion of the DIP Facility funded by the Tranche A DIP Lender.

1.141 ***Tranche B Agent*** means Black River Global Equity Fund Ltd. or its duly appointed successor, inapplicable upon the transfer of Tranche B DIP Facility Claims to Pivotal Global Capacity, LLC.

1.142 ***Tranche B DIP Facility Claims*** means all Claims arising out of or in connection with the Tranche B Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order).

1.143 **Tranche B DIP Lenders** means the Participating Debenture Holders or any successors in interest, now Pivotal Global Capacity, LLC, and any investor that is not a current holder of any of the Debtors' debentures and is approved by the Participating Debenture Holders, that signed the DIP Facility as a Tranche B Lender, *provided, however*, that, prior to the Confirmation Date, any Pre-Petition Debenture Lender that is not already a Tranche B Lender shall be entitled to participate in the DIP Facility as a Tranche B Lender up to a Pro Rata Share of the Tranche B Loan that is in the same proportion thereof as such Pre-Petition Debenture Lender's Pro Rata share of the Pre-Petition Debenture Obligations.

1.144 **Tranche B Loan** means that portion of the DIP Facility funded by the Tranche B DIP Lenders.

1.145 **Tranche B DIP Obligations** means \$7,250,000 plus accrued interest and other charges in accordance with the DIP Facility.

1.146 **Unreleased Avoidance Actions** means any and all actual or potential claims to avoid or recover a transfer of property or avoid any obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 547, 548, 549, 550, 551 and 553(b) of the Bankruptcy Code, including those which may be asserted derivatively, that are not released or transferred in the APA, the Plan, the Confirmation Order and/or any other order of the Bankruptcy Court approving the release of Avoidance Actions.

1.147 **Unsecured Claim** means any Claim that is not an Administrative Expense Claim, Priority Claim, Priority Non-Tax Claim, DIP Claim, or Pre-Petition Secured Debenture Claim, or a Claim otherwise specifically classified in another class in this Plan.

1.148 **U.S. Trustee** means the United States Trustee for the District of Delaware.

1.149 **U.S. Trustee Fees** means fees due to the U.S. Trustee by the Debtors or Liquidating Debtors arising under 28 U.S.C. § 1930(a)(6) or otherwise, and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

1.150 **Utility Motion** means the Motion for Interim and Final Orders: (A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors on Account of Prepetition Amounts Due; (B) Determining that the Utilities are Adequately Assured of Future Payment; (C) Establishing Procedures for Determining Requests for Additional Assurance; and (D) Permitting Utility Companies to Opt Out of the Procedures Established Herein [P-5].

1.151 **VPP 2009 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about July 31, 2009 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto.

1.152 **VPP Debenture Agent** means Aequitas Capital Management, Inc. (definition no longer applicable) or its successor in interest, now Pivotal Global Capacity, LLC.

1.153 ***VPP Debenture Distribution*** means, for each holder of a VPP Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series A Preferred Stock Distribution;~~[inapplicable under sale to Pivotal Global Capacity, LLC]~~ and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder or its successor in interest.~~[inapplicable under sale to Pivotal Global Capacity, LLC]~~

1.154 ***VPP Debenture Secured Claims*** means any Secured Claims arising pursuant to that certain Securities Purchase Agreement dated on or about July 31, 2009, among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto.

1.155 ***Wind Down*** means the wind down and liquidation of the Debtors and, after the Effective Date, the Liquidating Debtors, in accordance with the Plan if no Reorganization Election is made.

1.156 ***Wind Down Budget*** means the Liquidating Debtors' budget described in the APA showing all projected Wind Down Costs covering the period ending on the projected date of completion of the Wind Down of the Debtors. The Wind Down Budget shall be included in the Plan Supplement.

1.157 ***Wind Down Costs*** means, as set forth in the Wind Down Budget, Plan Administrator Expenses, and the fees and expenses incurred by the Liquidating Debtors (including reasonable fees and costs of attorneys and other professionals) for the purpose of: (i) resolving Disputed Claims, if any, and effectuating distributions to holders of Allowed Claims and Allowed Interests; (ii) otherwise implementing the Plan, the Wind Down and the closing of the Bankruptcy Cases; (iii) undertaking such other matters relating to implementation of the Plan as are deemed necessary and appropriate by the Liquidating Debtors; and (iv) operating the Liquidating Debtors in accordance with the Management Agreement.

B. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan. The words "in this Plan", "this Plan", "herein", "hereof", "hereto", "hereunder", and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. The word "including" means "including but not limited to". The use of the word "any" shall mean "any and all", and the use of the word "all" shall also mean "any and all". The words "shall" and "will" are used interchangeably and have the same meaning.

Whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender will include the masculine, the feminine and the neuter. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Except for the rules of construction contained in sections 102(5) of the Bankruptcy Code, which shall not apply, the rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. Any reference in

this Plan to a contract, instrument, release, indenture, or other agreement or documents being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. Subject to the provisions of any contract, certificates or articles of incorporation, by-laws, instruments, releases, or other agreements or documents entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules. The captions and headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any reference to a Person as a holder of a Claim or Interest includes that Person's successors and assigns.

C. *Plan Documents.*

All Plan Documents are incorporated into the Plan by reference and are a part of the Plan as if set forth in full herein. Confirmation of the Plan shall constitute approval of the Plan Documents by the Bankruptcy Court as of the Effective Date.

ARTICLE II

ADMINISTRATIVE EXPENSE CLAIMS, DIP CLAIMS, FEE CLAIMS, U.S. TRUSTEE FEES AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, DIP Claims, Fee Claims, U.S. Trustee Fees and Priority Claims of the Debtors have not been classified, and the holders thereof are not entitled to vote on this Plan in their capacity as holders of those Claims.

2.1. *Administrative Expense Claims.*

(a) *Time for Filing Administrative Expense Claims.*

The holder of an Administrative Expense Claim (including, for the avoidance of doubt, any claim for substantial contribution under section 503(b)(3) or (4) of the Bankruptcy Code), other than the holder of:

- (i) a Fee Claim;
- (ii) an Administrative Expense Claim that has been Allowed on or before the Effective Date;
- (iii) an Administrative Expense Claim on account of fees and expenses on or after the Petition Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court; and
- (iv) an Administrative Expense Claim arising, in the ordinary course of business, out of the employment by one or more Debtors of an individual from and after the

Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses,

must file with the Bankruptcy Court and serve on the Debtors, a request for payment of such Administrative Expense Claim (1) on or before the Confirmation Objection Deadline for any such Administrative Expense Claims claimed for the period from the Petition Date through the Confirmation Objection Deadline, and (2) within thirty (30) days after the Effective Date for any such Administrative Expense Claims claimed for the period from the Confirmation Objection Deadline through the Effective Date. Such request of Administrative Expense Claim must include at a minimum: (i) the name of the applicable Debtor that is purported to be liable for the Administrative Expense Claim and if the Administrative Expense Claim is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the holder of the Administrative Expense Claim; (iii) the amount of the Administrative Expense Claim; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim.

FAILURE TO FILE AND SERVE SUCH REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE EXPENSE CLAIM BEING FOREVER BARRED AND DISCHARGED.

(b) *Treatment of Administrative Expense Claims.*

Each Allowed Administrative Expense Claim shall be paid (i) in full, in Cash, by the Liquidating Debtors or Reorganized Debtors, as applicable on the later of (x) the Effective Date or (y) the date such Claim becomes Allowed, or due and payable in the ordinary course of business, or (ii) on such other terms and conditions as may be agreed to between the holder of such Administrative Expense Claim, the Liquidating Debtors or Reorganized Debtors, as applicable, and the Purchaser.

2.2. *DIP Claims.*

(a) *Tranche A DIP Facility Claim.*

The holder of the Tranche A DIP Facility Claim shall be paid by the Liquidating Debtors or Reorganized Debtors, as applicable, in full in Cash on the Effective Date of the Plan, or as soon thereafter as is reasonably practicable, for all obligations arising out of or in connection with the Tranche A Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order) unless otherwise agreed to in writing by the holder of the Tranche A DIP Facility Claim, which Purchaser is satisfying through a Credit Bid of the Tranche A DIP Facility Claim.

(b) *Tranche B DIP Facility Claims.*

In the event that Newco is the Purchaser, each holder of a Tranche B DIP Facility Claim shall receive, in full and final satisfaction of such Allowed Tranche B DIP Facility Claim, its Pro Rata Share (based on its interest in the Tranche B Loan) of Series C Preferred Stock[inapplicable under sale to Pivotal Global Capacity, LLC]. In the event Newco is not

the Purchaser, each holder of a Tranche B DIP Facility Claim shall be paid by the Liquidating Debtors or Reorganized Debtors, as applicable, in full in cash on the Effective Date of the Plan (unless paid earlier pursuant to a Final Order approving the relief requested in the Bid Procedures Motion), or as soon thereafter as is reasonably practicable, all obligations arising out of or in connection with the Tranche B Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order), and which Purchaser is satisfying through a Credit Bid of the Tranche B DIP Facility Claims.

All distributions to be made to the holders of Tranche B DIP Facility Claims pursuant to this Article 2.2(b) shall be made to Pivotal Global Capacity, LLC, as successor holder of the Tranche B DIP Facility.

2.3. *Fee Claims.*

(a) *Time for Filing Fee Claims.*

Any Professional seeking allowance by the Bankruptcy Court of a Fee Claim shall file its respective final application for allowance of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date no later than forty-five (45) days after the Effective Date. **FAILURE TO FILE SUCH FEE APPLICATION TIMELY SHALL RESULT IN THE FEE CLAIM BEING FOREVER BARRED AND DISCHARGED.**

Objections to such Fee Claims, if any, must be filed and served no later than sixty-five (65) days after the Effective Date or such other date as established by the Bankruptcy Court. The Liquidating Debtors or Reorganized Debtors, as applicable may seek an extension of this deadline for objecting to Fee Claims on ex parte motion.

(b) *Treatment of Fee Claims.*

All Professionals seeking allowance by the Bankruptcy Court of a Fee Claim shall be paid by the Liquidating Debtors or Reorganized Debtors, as applicable, in full in cash in such amounts as are approved by the Bankruptcy Court: (i) upon the later of (x) the Effective Date, and (y) ten (10) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or as soon thereafter as is reasonably practicable, or (ii) upon such other terms as may be mutually agreed upon between the holder of such Fee Claim and the Liquidating Debtors or Reorganized Debtors, as applicable. On the Effective Date, or as soon thereafter as is reasonably practicable, Purchaser shall pay to the Liquidating Debtors or Reorganized Debtors, as applicable, the Fee Payment Cap, which shall be held in a segregated account, which Cash shall be disbursed solely to the holders of Allowed Fee Claims and U.S. Trustee Fees and to meet Wind Down Budget expenditures with the remainder to be reserved until all Allowed Fee Claims in agreed amounts have been paid in full or all remaining Fee Claims have been Disallowed by Final Order, at which time any remaining Cash in the segregated account shall become the sole and exclusive property of the Liquidating Debtors or Reorganized Debtors, as applicable, to be distributed in accordance with the terms of this Plan, provided, however, that any advances under the Sale Facility prior to the Effective Date (and prior to Sale Closing) of amounts within the Fee Payment Cap reduce, dollar for dollar, the

amounts available in the Fee Payment Cap, the Sale Facility, and such specified portion of the Sale Facility.

2.4. *U.S. Trustee Fees.*

The Liquidating Debtors shall pay all U.S. Trustee Fees on an ongoing basis on the date such U.S. Trustee Fees become due, until such time as a final decree is entered closing the applicable Bankruptcy Case or the applicable Bankruptcy Case is converted or dismissed, or the Bankruptcy Court orders otherwise.

2.5. *Priority Non-Tax Claims.*

Each Allowed Priority Non-Tax Claim shall be paid the Allowed amount of its Priority Non-Tax Claim (a) in full, in Cash, by the Liquidating Debtors or Reorganized Debtors, as applicable on the Effective Date, or as soon thereafter as is reasonably practicable, or (b) upon such other terms as may be mutually agreed upon between such holder of an Allowed Priority Non-Tax Claim, the Liquidating Debtors or Reorganized Debtors, as applicable and the Purchaser.

2.6. *Priority Tax Claims*

Each Allowed Priority Tax Claim shall be paid the Allowed amount of its Priority Tax Claim (a) in full, in Cash, by the Liquidating Debtors on the Effective Date, or as soon thereafter as is reasonably practicable, (b) over a period ending not later than five (5) years after the Petition Date, or (c) upon such other terms as may be mutually agreed upon between such holder of an Allowed Priority Tax Claim, the Liquidating Debtors and the Purchaser.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1. *Classification of Claims and Interests.*

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation and distribution under this Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. However, a Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to this Plan only to the extent that such Claim or Interest is or becomes an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

The following designates the Classes of Claims against and Interests in the Debtors and the treatment thereof under the Plan, and specifies which Classes are: (i) impaired or unimpaired by this Plan; (ii) entitled to vote to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code; and (iii) deemed to accept or reject this Plan.

A *Classified Claims.*

1. *Class 1 July Debenture Secured Claims.*

(a) Treatment: Class 1 consists of the Secured Claims of the holders of Allowed July Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed July Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed July Debenture Secured Claim, its respective July Debenture Distribution. **[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]**

(ii) For all purposes under this Plan, each holder of a July Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed July Debenture Secured Claim **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder under this Plan and the Allowed Amount of the July Debenture Secured Claim.

All distributions to be made to the holders of July Debenture Secured Claims pursuant to this Plan shall be made to the Pivotal Global Capacity LLC as successor to the July Debenture Agent for the benefit of such holders.

(b) Voting: The July Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 1 of the Plan. Each holder of a July Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

2. *Class 2 August Debenture Secured Claims.*

(a) Treatment: Class 2 consists of the Secured Claims of the holders of the Allowed August Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed August Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed August Debenture Secured Claim, its respective August Debenture Distribution. **[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]**

(ii) For all purposes under this Plan, each holder of an August Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed August Debenture Secured Claim **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (b) if Newco is not the Purchaser, the difference

between the Credit Bid of such holder and the Allowed Amount of the August Debenture Secured Claim.

All distributions to be made to the holders of August Debenture Secured Claims pursuant to this Plan will be made to Pivotal Global Capacity LLC as successor to the August Debenture Agent for the benefit of such holders.

(b) Voting: The August Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 2 of the Plan. Each holder of an August Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

3. *Class 3 VPP Debenture Secured Claims.*

(a) Treatment: Class 3 consists of the Secured Claims of the holders of the Allowed VPP Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed VPP Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed VPP Debenture Secured Claim, its respective VPP Debenture Distribution. **[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]**

(ii) For all purposes under this Plan, each holder of a VPP Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed VPP Debenture Secured Claim **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder and the Allowed Amount of the VPP Debenture Secured Claim.

All distributions to be made to the holders of VPP Debenture Secured Claims pursuant to this Plan shall be made to Pivotal Global Capacity LLC as successor to the VPP Debenture Agent for the benefit of such holders.

(b) Voting: The VPP Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 3 of the Plan. Each holder of a VPP Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

4. *Class 4 March Debenture Secured Claims.*

(a) Treatment: Class 4 consists of the Secured Claims of the holders of Allowed March Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed March Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed March Debenture Secured Claim, its respective March

Debenture Distribution. **[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]**

(ii) For all purposes under this Plan, each holder of a March Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed March Debenture Secured Claim **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder and the Allowed Amount of the March Debenture Secured Claim.

All distributions to be made to the holders of March Debenture Secured Claims pursuant to this Plan shall be made to Pivotal Global Capacity LLC as successor to the March Debenture Agent for the benefit of such holders.

(b) Voting: The March Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 4 of the Plan. Each holder of a March Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

5. *Class 5 November Debenture Secured Claims.*

(a) Treatment: Class 5 consists of the Secured Claims of the holders of Allowed November Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed November Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed November Debenture Secured Claim, its respective November Debenture Distribution. **[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]**

(ii) For all purposes under this Plan, each holder of a November Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed November Debenture Secured Claim **[inapplicable under sale to Pivotal Global Capacity, LLC]**; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder and the Allowed Amount of the November Debenture Secured Claim.

All distributions to be made to the holders of November Debenture Secured Claims pursuant to this Plan shall be made to Pivotal Global Capacity LLC as successor to the November Debenture Agent for the benefit of such holders.

(b) Voting: The November Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 5 of the Plan. Each holder of a November Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

6. *Class 6 Mission Critical Vendor Claims.*

(a) Treatment: Each Mission Critical Vendor Claim will be assumed by and will be entitled to payment by Purchaser (or, in the event of a Restructuring Election, by the Reorganized Debtors) in cash in full in accordance with the terms proposed by the Debtors in their October 31, 2010, Notice of Debtors' Designation of Successful Bidder in Conjunction with Reorganization Plan, Rescheduled Sale Hearing, and Assumption and Assignment of Contracts, Executory Contracts and Unexpired Leases and Objection Deadline [DE 369] except with respect to the Mission Critical Vendors that objected to such treatment: Verizon Communications, Inc. [DE 416], AboveNet Communications, Inc. [DE 375, 402], Oracle America, Inc. [DE 415], Level 3 Communications, LLC and its affiliates [DE 270], Qwest Communications Company LLC and Qwest Corporation [DE 273] and AT&T Corp. [DE 387], whose Mission Critical Vendor Claims will be satisfied by treatment to which each has agreed and will be set forth in the Confirmation Order.

(b) Voting: Class 6 Claims are unimpaired since each has consented to the treatment proposed, and accordingly is receiving the treatment to which it is entitled. The holders of Mission Critical Vendor Claims are deemed to accept the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

7. *Class 7 Unsecured Claims.*

(a) Treatment:

(i) In the event that Newco is the Purchaser, on the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed Unsecured Claim (including the holders of any Deficiency Claims) shall be entitled to a Pro Rata Share of the New Common Stock Pool. **This provision is moot since Newco is not participating in distributions under the Plan; accordingly, holders of Unsecured Claims will receive no distributions under the Plan.**

(ii) In the event that Newco is not the Purchaser, (i) each holder of an Allowed Unsecured Claim (including the holders of any Deficiency Claim) shall receive its Pro Rata Share of any Cash portion of the Sale Proceeds remaining after payment in full of all Allowed Secured Claims in Classes 1, 2, 3, 4, and 5, on the Effective Date or as soon thereafter as is reasonably practicable, [**This provision is moot since the Sale Proceeds will be insufficient to pay all Allowed Secured Claims in Classes 1-5**] and (ii) the Debtors and Newco will engage in discussions about an alternative distribution to Class 7 and Class 10 in lieu of the New Common Stock Pool. **This provision is moot since Newco is not participating in distributions under the Plan**

(iii) To the extent permitted by law, in the event that Newco is the Purchaser, on the Effective Date the holders of Deficiency Claims in Classes 1, 2, 3, 4 and 5 shall assign their right to receive distributions of New Common Stock from the New Common Stock Pool on account of their Deficiency Claims to (i) the holders of Class 7 Unsecured Claims that are not Deficiency Claim holders and (ii) the holders of Class 10 Interests, at the direction of

the Debtors. **This provision is moot since Newco is not participating in distributions under the Plan.**

All distributions to be made to the holders of Pre-Petition Debenture Claims pursuant to this Article 3.1(A)(7)(a) will be made to the applicable Pre-Petition Debenture Agent for the benefit of such holders. **This provision is moot since there are no longer Pre-Petition Debenture Agents**

(b) Voting: Unsecured Claims are impaired claims. The holders of Allowed Class 7 Unsecured Claims are impaired. The holders of Allowed Class 7 Unsecured Claims, including the holders of Deficiency Claims, were entitled to vote to accept or reject the Plan in Class 7 of the Plan. Alternatively, they are deemed to reject the Plan.

8. *Class 8 Intercompany Claims.*

(a) Treatment: Each Intercompany Claim will be disallowed, cancelled, extinguished or reinstated at the option of Purchaser, which shall be specified by notice filed with the Court before the Effective Date.

(b) Voting: Class 8 Claims are impaired. The holders of Intercompany Claims are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

B *Interests.*

1. *Class 9 Subsidiary Debtors' Interests.*

(a) Treatment: To the extent not otherwise transferred under the APA, on the Effective Date, the Subsidiary Debtors' Interests shall be disallowed, cancelled, extinguished or reinstated at the option of Purchaser, subject to Article 5.2(c) of this Plan. For the avoidance of doubt, the Debtors' equity interest in Magenta NetLogic Limited (U.K.) may not be cancelled and may be acquired by the Purchaser pursuant to the APA. Purchaser's election with respect to cancellation or transfer of Debtors' equity interest in Magenta shall be specified by notice filed with the Court before the Effective Date.

(b) Voting: Class 9 Interests are impaired. The holders of Subsidiary Debtors' Interests are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

2. *Class 10 Debtors' Parent Interests.*

(a) Treatment: The Debtors' Parent Interests may be cancelled as of the Effective Date. If the Reorganization Election is made, however, with the Sale implemented by Pivotal Global Capacity, LLC by direct purchase of the Interests of Capital Growth Systems, Inc. and/or one or more of its subsidiaries or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of Capital Growth Systems, Inc. or one or more of its subsidiaries into any form of entity under the laws of any state, or otherwise in accordance

with the Reorganization Election option in the Plan. The Debtors' Parent Interests may alternatively be extinguished and new shares issued to the Purchaser as a method of implementing a Reorganization Election.

(i) To the extent permitted by law, in the event that Newco is the Purchaser, on the Effective Date, the holders of Allowed Debtors' Parent Interests shall receive a Pro Rata Share of the distributions from the New Common Stock Pool which would otherwise be attributable to the holders of Deficiency Claims under this Plan but which have been assigned by the holders of Deficiency Claims in Classes 1, 2, 3, 4 and 5 to the holders of Allowed Debtors' Parent Interests [**inapplicable under sale to Pivotal Global Capacity, LLC**]. The distribution will only be effectuated in a manner agreed by Newco and the Debtors that will not require registration under any applicable law, including, without limitation, the Securities Act of 1933, the Securities Exchange Act of 1934, or any state securities laws. **This provision is moot since Newco is not participating in distributions under the Plan.**

(ii) In the event that Newco is not the Purchaser, (i) each holder of an Allowed Debtors' Parent Interest shall receive its Pro Rata Share of any Cash portion of the Sale Proceeds remaining after payment in full of all Allowed Secured Claims in Classes 1, 2, 3, 4, and 5 and all Allowed Unsecured Claims (including Deficiency Claims) in Class 7, on the Effective Date, or as soon thereafter as is reasonably practicable, and (ii) the Debtors and Newco will engage in discussions about an alternative distribution to Class 7 and Class 10 in lieu of the New Common Stock Pool. [**inapplicable under sale to Pivotal Global Capacity, LLC; all holders of Allowed Debtors' Parent Interests receive nothing under the Plan, and all of their rights, claims and interests in the Debtors' Parent Interests are extinguished and discharged in full, whether or not a Reorganization Election is made**]

(b) Voting: Class 10 Interests are impaired. The holders of Debtors' Parent Interests are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS OR INTERESTS

4.1. *Class Acceptance Requirement.*

(a) A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount of the Allowed Claims in such Class and more than one-half (1/2) in number of holders of such Claims that have voted on the Plan.

(b) A Class of Interests shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have voted on the Plan.

4.2. *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or “Cramdown.”*

If any Classes vote to reject this Plan, the Debtors intend to request confirmation of this Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, or supplement this Plan or any Plan Document, as to any and all Debtors, in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

4.3. *Elimination of Vacant Classes.*

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

ARTICLE V

MEANS FOR IMPLEMENTATION

5.1. *Sale of Assets/Reorganization of Debtors*

(a) *Assumption/Assignment.* To the extent not previously transferred under a prior Sale Order, the Debtors shall be authorized on the Effective Date to, among other things, sell, assume, assign and/or transfer the Acquired Assets pursuant to sections 105(a), 363, 365, 1123(b)(4), 1129 and 1146(a) of the Bankruptcy Code under the terms and conditions of this Plan to the Purchaser, and such sale or transfer shall be free and clear of any and all Liens, Interests, Claims, charges and encumbrances. Except as otherwise expressly provided in this Plan, the Debtors are authorized to take any and all actions necessary to consummate the Sale. The actions necessary to effect the Sale may include: (i) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the Debtors and the Purchaser may agree, and (ii) all other actions that the Debtors and the Purchaser determine to be necessary or appropriate in connection with such transactions, including making such filings or recordings that may be required by or appropriate under applicable state law.

(b) *Plan Structure.* The proposed Sale will result in either (i) the transfer of the Acquired Assets to Purchaser pursuant to a sale under section 363 of the Bankruptcy Code; or, (ii) if a Reorganization Election is made, the issuance by the Debtors to Purchaser of 100% of the Interests of the Reorganized Debtors in consideration of the Sale Proceeds. Either scenario will provide for substantially similar treatment to holders of Claims and Interests as outlined above, unless otherwise agreed to or as determined by the Bankruptcy Court. The Debtors and Purchaser will work together to structure the proposed Sale in the form ultimately determined by Purchaser.

(c) *Restructuring Options.* If and as directed by the Purchaser and consistent with the Plan, to implement the Plan, the Purchaser and the applicable Debtors or Reorganized Debtors, as the case may be, may enter into such transactions and may take such actions as may be necessary or appropriate to effect a corporate restructuring of their respective businesses, to otherwise simplify the overall corporate structure of the Debtors or Reorganized Debtors, as the case may be, or to reincorporate certain of the Debtors under the laws of jurisdictions other than the laws under which the applicable Debtors are presently incorporated. Such restructuring may include a debt-for-equity exchange, one or more mergers, consolidations, restructurings, dispositions, liquidations, dissolutions or reincorporations, as may be determined by the Purchaser to be necessary or appropriate. The actions to effect such restructuring may include, at the Purchaser's option (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable entities may agree, (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree, (iii) the filing of appropriate certificates or articles of merger, consolidation or dissolution pursuant to applicable state law and (iv) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. The acquisition of the Purchased Assets may also be accomplished indirectly, and the form of the acquisition may be an acquisition of the Interests of Debtor Capital Growth Systems, Inc. or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such Interests) by direct purchase of such Interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state.

(d) *Preservation of Tax Attributes.* In the event of a restructuring, as set forth above in Article 5.1(c), Purchaser shall have the right, in accordance with applicable non-bankruptcy law, to structure the Sale in a tax efficient manner, so as to preserve and maximize (to the extent feasible) the Debtors' historical tax attributes or, in lieu thereof, to achieve a step-up in basis of the Acquired Assets. As directed by and in consultation with Purchaser, the Debtors shall take any and all actions reasonably necessary to achieve the foregoing.

5.2. *Vesting of Assets*

(a) *Assets of the Debtors.* To the extent not previously transferred under a prior Sale Order or an APA, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, and except as otherwise provided in this Plan or in the Confirmation Order, all Acquired Assets of the Debtors' Estates, including all claims, rights and Retained Causes of Action other than the Debtors' Retained Causes of Action, shall vest in the Purchaser free and clear of all Claims, Liens, charges, other encumbrances and interests. On the Effective Date, the Debtors' Retained Causes of Action shall vest in the Liquidating Debtors or Reorganized Debtors, as applicable.

(b) Avoidance Actions. Any Unreleased Avoidance Actions shall vest in the Purchaser on the Effective Date to the extent provided in the APA and, to the extent not so provided in the APA, in the Liquidating Debtors or Reorganized Debtors, as applicable.³ Upon and after the Effective Date, the Purchaser, or the Liquidating Debtors or Reorganized Debtors, as applicable, shall have the authority to analyze, continue, commence, prosecute, settle and realize upon the Unreleased Avoidance Actions in its discretion without any requirement of notice or Bankruptcy Court approval, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or the Confirmation Order. To the extent necessary, following the Effective Date, the Purchaser, or the Liquidating Debtors or Reorganized Debtors, as applicable, shall be deemed to be a judicial substitute for the Debtors as the party-in-interest with respect to such Unreleased Avoidance Actions and the representative of the Estates with respect to such Unreleased Avoidance Actions pursuant to section 1123(b)(3)(B).

(c) Interests. In the event of a Reorganization Election, the Interests in any Reorganized Debtor may vest fully in such Reorganized Debtor or Debtors corresponding to the Debtor or Debtors that held such Debtor's ownership Interests prior to the Effective Date, in each case, free and clear of all rights, Liens, Claims, encumbrances and other liabilities, including of Pre-Petition holders of such Interests, without express or implied limitation, in such Debtors.

5.3. *Exit Capital Requirements Plan Funding.*

Except as otherwise provided in the Plan or the APA, including the aggregate limitation in the Fee Payment Cap in the APA, the Exit Capital Requirements Funding shall be used by the Liquidating Debtors: (i) to pay in full Allowed Administrative Expense Claims, Tranche A DIP Facility Claims, Tranche B DIP Facility Claims (to the extent applicable), Allowed Fee Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims, and (ii) to provide a sufficient reserve for the payment of Wind Down Costs. For the avoidance of doubt and notwithstanding anything to the contrary herein, unless a Reorganization Election is made, Newco shall only be required to fund the Exit Capital Funding amount and other Assumed Liabilities set forth in Schedule 2 of the Plan Support Agreement and Wind Down Costs set forth in the Wind Down Budget.

5.4. *Continued Corporate Existence and Authority to Implement.*

(a) From and after the Effective Date, if no Reorganization Election is made, each of the Liquidating Debtors shall be managed and administered by the Plan Administrator, who shall be appointed the sole manager of each of the Liquidating Debtors and shall have full authority to administer the provisions of the Plan. The Liquidating Debtors may employ one or more Persons to assist in performing duties under the Plan. On and after the Effective Date, the Liquidating Debtors may effectuate the Wind Down of the Estates, including (i) payment of all Wind Down Costs, (ii) resolving Disputed Claims, if any, and (iii) effectuating distributions to holders of Allowed Claims and Allowed Interests; (iv) otherwise implementing the Plan, the Wind Down and the closing of the Bankruptcy Cases; and (v) undertaking such other matters

³ The Debtors are generally only retaining Avoidance Actions against persons, firms or entities that are not customers, business partners, or ongoing relationships of the Debtors' business, including, but not limited to, those who are Mission Critical Vendors.

relating to implementation of the Plan as are deemed necessary and appropriate by the Liquidating Debtors. The Liquidating Debtors may pay the charges that they incur on or after the Effective Date for Professional Persons' fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

(b) The Liquidating Debtors will continue to exist after the Effective Date to the extent needed to operate the Non-Transferred Assets in accordance with the Management Agreement subsequent to closing on the Sale until such Non-Transferred Assets are transferred to Purchaser.

(c) Notwithstanding any transfer of Causes of Action to the Purchaser, the Liquidating Debtors or Reorganized Debtors, as applicable shall retain the right to assert such Causes of Action solely for the purpose of asserting defenses against Claims which have been or are asserted against the Debtors, *provided, however*, the Liquidating Debtors or Reorganized Debtors, as applicable may not object to (i) Mission Critical Vendor Claims, (ii) Claims that are Assumed Liabilities as to counterparties to contracts assumed and assigned to Purchaser under the APA, (iii) customers of the Business, and (iv) any other party determined by Purchaser in its sole discretion to be important to the operation of the Business, and designated by Purchaser prior to the Closing.

(d) Except as otherwise provided in this Plan, the Liquidating Debtors will continue to exist after the Effective Date as separate corporate entities, in accordance with the applicable laws of the respective jurisdictions in which they are incorporated or organized, for the purposes of satisfying their obligations under the Plan, including making distributions as required under the Plan and effectuating the Wind Down. Except as otherwise directed by the Purchaser pursuant to Article 5.1(c), on or after the Effective Date, the Liquidating Debtors, in their sole and exclusive discretion, may take such action as permitted by applicable law as such Liquidating Debtors may determine is reasonable and appropriate, including, but not limited to, causing: (i) a Liquidating Debtor to be merged into another Liquidating Debtor; (ii) a Liquidating Debtor to be dissolved; (iii) the legal name of a Liquidating Debtor to be changed; or (iv) the closing of a Liquidating Debtor's case after the Final Distribution Date.

5.5. *Plan Administrator.*

1. *Appointment.* The Debtors and the Purchaser shall jointly designate a person, who will serve as the Plan Administrator; provided, however, that the Plan Administrator shall be subject to removal by the Bankruptcy Court for cause shown at any time.

2. *Immunity.* The Plan Administrator shall not be liable for any action it takes or omits to take that it believes in good faith to be authorized or within its rights or powers unless it is ultimately and finally determined by a court of competent jurisdiction that such action or inaction was the result of fraud, gross negligence or willful misconduct.

3. *Resignation, Death or Removal.* The Plan Administrator may be removed by the Bankruptcy Court upon application for good cause shown. In the event of the resignation or removal, liquidation, dissolution, death or incapacity of the Plan Administrator, the Liquidating Debtors and Purchaser shall designate another person to become Plan Administrator

and thereupon the successor Plan Administrator, without any further act, shall have all of the rights, powers, duties and obligations of its predecessor.

4. *Authority of Plan Administrator.* The Plan Administrator shall have the authority on behalf of the Liquidating Debtors to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform the Liquidating Debtors' duties under this Plan; (ii) make all applicable distributions or payments contemplated hereby; (iii) employ professionals to represent the Liquidating Debtors with respect to the Liquidating Debtors' responsibilities, and (iv) exercise such other powers as may be vested in the Liquidating Debtors by order of the Bankruptcy Court (including any order issued after the Effective Date), pursuant to this Plan, or as deemed by the Plan Administrator to be necessary and proper to implement the provisions hereof.

5. *Expenses Incurred on or After the Effective Date.* Except as otherwise provided in the Plan, after consultation with and agreement of Purchaser, the amount of any reasonable fees and expenses incurred by the Plan Administrator on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney and other professional fees and expenses and reasonable compensation and reimbursement of expenses to the Plan Administrator) of the Liquidating Debtors shall constitute Wind Down Costs and shall be paid in Cash from proceeds available for such expenses pursuant to the Plan without notice or hearing or any order of the Bankruptcy Court.

5.6. *Wind Down of the Debtors' Estates.*

(a) The Plan Administrator shall oversee the Liquidating Debtors' Wind Down and shall cause the Liquidating Debtors to make distributions to, and otherwise hold all property of the Liquidating Debtors for the benefit of, holders of Allowed Claims and Allowed Interests consistent and in accordance with the Plan and the Confirmation Order. The Liquidating Debtors (including the Plan Administrator) shall not be required to post a bond in favor of the United States.

(b) Except as otherwise provided in the Plan, the Plan Administrator shall have the power and authority to perform the following acts on behalf of the Liquidating Debtors, in addition to any powers granted by applicable non-bankruptcy law or conferred by any other provision of the Plan or orders of the Bankruptcy Court: (i) take all steps and execute all instruments and documents necessary to make distributions to holders of Allowed Claims, the appropriate Pre-Petition Debenture Agent and the Tranche B Agent, as applicable; (ii) object to Claims as provided in this Plan and prosecute such objections; (iii) resolve, compromise and/or settle any objections to the amount, validity, priority, treatment, allowance or priority of Claims, Administrative Expenses, or Interests; (iv) comply with this Plan and the obligations hereunder; (v) if necessary, employ, retain, or replace professionals to represent the Liquidating Debtors with respect to their responsibilities; (vi) establish, replenish or release reserves as provided in this Plan, as applicable; (vii) take all actions necessary or appropriate to enforce the Debtors' or Liquidating Debtors' rights under the Auction Sale Order or any Sale Order, and any related document and to fulfill, comply with or otherwise satisfy the Debtors' or Liquidating Debtors' covenants, agreements and obligations under any APA and any related document; (viii) make all

determinations on behalf of the Debtors or Liquidating Debtors under any APA; (ix) prepare and file applicable tax returns for any of the Debtors or Liquidating Debtors; (x) deposit funds of the Liquidating Debtors, draw checks and make disbursements consistent with the terms of this Plan; (xi) purchase or continue insurance protecting the Debtors, the Liquidating Debtors, Plan Administrator and the property of the Liquidating Debtors; (xii) seek entry of a final decree in any of the Bankruptcy Cases at the appropriate time; prosecute, resolve, compromise and/or settle any litigation; (xiii) abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization (as such term is described in Internal Revenue Code section 501(c)(3) (whose contributions are deductible under Internal Revenue Code section 170)) of the Plan Administrator's choice, any assets that are of no material benefit, including distributable Cash hereunder; and (xiv) take such other action as the Plan Administrator may determine to be necessary or desirable to carry out the purpose of this Plan.

(c) Except as otherwise provided in an executed Management Agreement, following the Effective Date, the Liquidating Debtors shall not engage in any business activities or take any actions except those necessary in the judgment of the Liquidating Debtors to effectuate the Plan, the Wind Down and the compliance with any obligations under any APA or Sale Order. On and after the Effective Date, the Liquidating Debtors may take such action and settle and compromise Claims or Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or the Confirmation Order.

5.7. *Credit Agreements, Existing Securities and Agreements.*

Except as otherwise provided in this Plan, to the extent not previously canceled and discharged under a prior Sale Order, on the Effective Date, all agreements, instruments, and other documents evidencing any Claim against or Interest in a Debtor (other than any *Subsidiary Debtors' Interests*) and any rights of any holder in respect thereof, including any security interests or Liens in Assets of the Debtors, shall be deemed, discharged and of no force or effect against the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, the Assets and the Purchaser, provided, however, that Pivotal Global Capacity LLC as successor holder of the Pre-Petition Debentures and Pivotal GC Senior Loan Documents (as defined in the Final DIP Order) and DIP Lenders may continue to hold and may exercise its rights and remedies as a secured creditor, including with respect to Magenta assets and/or Interests. The holders of or parties to such instruments, securities and other documentation (other than any *Subsidiary Debtors' Interests*) will have no rights arising from or relating to such instruments, securities and other documentation against the Debtors, Liquidating Debtors or Reorganized Debtors, as applicable, Purchaser or the Assets, except the rights expressly provided for in the Plan, including as set forth in this section, but shall reserve any and all rights arising therein against all other Persons, unless specifically released under the Plan.

5.8. *Assumed Liabilities.*

Unless otherwise provided in the Plan, any order of the Bankruptcy Court, or any APA, to the extent not previously accomplished under a prior Sale Order, on the Effective Date, the Purchaser shall be responsible for payment and satisfaction of all Assumed Liabilities. All Persons holding Claims and Interests arising out of or concerning any Assumed Liability shall be

forever barred, estopped and permanently enjoined from asserting against the Debtors, Liquidating Debtors or the Plan Administrator or any of their property, such Persons' Claims or Interests (as applicable) arising out of or concerning such Assumed Liabilities. For the avoidance of doubt and notwithstanding anything to the contrary herein, unless a Reorganization Election is made, Newco shall only be required to fund the Exit Capital Funding amount and other Assumed Liabilities set forth in Schedule 2 of the Plan Support Agreement and Wind Down Costs set forth in the Wind Down Budget [**inapplicable under sale to Pivotal Global Capacity, LLC**]. The APA of Pivotal Global Capacity LLC provides that *Assumed Liabilities* includes postpetition accrued and unbilled (a) obligations under assumed Contracts and Real Property Leases and (b) Taxes of Governmental Units which will be paid when invoiced and due in the ordinary course after Closing.

5.9. *Cancellation of Certain Existing Security Interests.*

To the extent not previously accomplished under a prior Sale Order, upon satisfaction of an Allowed Secured Claim in accordance with the provisions of this Plan, all Liens and Encumbrances securing such Allowed Secured Claims shall be automatically cancelled and released and shall be of no effect whatsoever against the Assets, and, without limiting the foregoing, at the request of the Liquidating Debtors or Reorganized Debtors, as applicable or the Purchaser, the holders of any Allowed Secured Claims in Classes 1, 2, 3, 4 and 5 shall execute and deliver to the Purchaser any termination statements, instruments of satisfaction, or releases of all security interests with respect to their Secured Claims that may be reasonably required in order to terminate any related financing statements, mortgages, mechanic's liens, or lis pendens, provided, however, that Pivotal Global Capacity LLC as successor holder of the Pre-Petition Debentures and DIP Lenders shall continue to hold and may exercise its rights and remedies as a secured creditor with respect to Magenta assets and/or Interests. Upon satisfaction of the Secured Claims in Classes 1, 2, 3, 4, and 5 pursuant to the terms of this Plan, to the extent deemed necessary or appropriate by the Purchaser, the Liquidating Debtors or Reorganized Debtors, as applicable shall have the authority on behalf of and in the name of the holders of the Secured Claims in Classes 1, 2, 3, 4, and 5 to execute, deliver and file documents to terminate any related financing statements, mortgages, mechanic's liens, or lis pendens.

5.10. *Managers, Officers and any Boards of Directors.*

(a) *Officers and Managers.* The managers and any officers of the Debtors immediately prior to the Effective Date, in their capacities as such, shall be deemed removed from such positions as of the Effective Date.

(b) *Boards.* The members of any board of directors or board of managers of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing authority with respect to the Liquidating Debtors or Reorganized Debtors, as applicable on or after the Effective Date and each such member will be deemed to have resigned on the Effective Date.

(c) *Plan Administrator as Sole Manager, Officer and Director.* The Plan Administrator shall be the sole manager, officer and sole member of any board of directors and/

or board of managers of each of the Liquidating Debtors from and following the Effective Date without the need for board or shareholder or membership vote and without any requirement of further action by any members, stockholders, managers, officers, or boards of directors or managers of the Debtors and shall have all rights of a manager, officer and director of the Liquidating Debtors under applicable non-bankruptcy law, and all rights conferred under the Confirmation Order and this Plan.

5.11. *Corporate Action.*

(a) Entry of the Confirmation Order shall establish conclusive corporate and other authority (and evidence of such corporate and other authority) required for each of the Debtors or Liquidating Debtors or Reorganized Debtors, as applicable, to undertake any and all acts and actions required to implement or contemplated by the Plan (including, without limitation, the execution and delivery of any APA), and such acts and actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without the need for board or shareholder or membership vote and without any requirement of further action by any members, stockholders, managers, officers, or boards of directors or managers of the Debtors.

(b) On the Effective Date, the Liquidating Debtors (through the Plan Administrator) or Reorganized Debtors, as applicable, are authorized to execute and/or deliver the agreements, documents and instruments contemplated by the Plan, and any APA and any Plan Documents, and any schedules, exhibits or other documents attached thereto or contemplated thereby, in the name and on behalf of the Debtors and the Liquidating Debtors or Reorganized Debtors, as applicable.

(c) Upon entry of a final decree in each Bankruptcy Case, unless otherwise reorganized in accordance with this Article V or not previously dissolved, the applicable Liquidating Debtor shall be deemed automatically dissolved and wound up without any further action or formality which might otherwise be required under applicable non-bankruptcy laws.

ARTICLE VI

DISTRIBUTIONS

6.1. *Distributions.*

The Liquidating Debtors or Reorganized Debtors, as applicable, shall make all Plan Distributions, other than distributions to the holders of Allowed Mission Critical Vendor Claims, to the appropriate holders of Allowed Claims and Allowed Interests or to the appropriate Pre-Petition Debenture Agent or Tranche B Agent, as applicable, in accordance with the terms of this Plan. The Purchaser shall make all Plan Distributions to the holders of Allowed Mission Critical Vendor Claims in accordance with the terms of the APA except for Cure payments on the Effective Date, which shall be made by the Liquidating Debtors or Reorganized Debtors, as applicable.

6.2. *No Postpetition Interest on Claims and Allowed Interests.*

Unless otherwise specifically *provided* for in the Plan, Confirmation Order or other order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on any Claims or Interests, and no holder of a Claim or Interest shall be entitled to interest accruing on such Claim or Interest on or after the Petition Date.

6.3. *Date of Distributions.*

Unless otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon thereafter as is practicable, provided that the Liquidating Debtors or Reorganized Debtors, as applicable, may utilize periodic distribution dates to the extent appropriate. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.4. *Distribution Record Date.*

Except as otherwise provided in the Plan, as of the close of business on the Distribution Record Date, the various lists of holders of Claims or Interests in each of the Classes, as maintained by the Debtors, or their agents, shall be deemed closed and there shall be no further changes in the record holders of any of the Claims. The Liquidating Debtors or Reorganized Debtors, as applicable, shall not have any obligation to recognize any transfer of Claims or Interests occurring after the close of business on the Distribution Record Date.

6.5. *Disbursing Agent.*

Except as otherwise provided in the Plan, the Liquidating Debtors or Reorganized Debtors, as applicable, shall serve as the Disbursing Agent and all distributions under this Plan shall be made by the Liquidating Debtors or Reorganized Debtors, as applicable, on and after the Effective Date as provided herein. Neither the Plan Administrator nor the Liquidating Debtors nor Reorganized Debtors, as applicable, shall be required to give any bond or surety or other security for the performance of any duties under this Plan.

6.6. *Delivery of Distribution.*

The Liquidating Debtors or Reorganized Debtors, as applicable, will make all distributions or payments to any holder of an Allowed Claim (other than a Pre-Petition Debenture Claim, Tranche B Loan Claim, and Mission Critical Vendor Claim) or Allowed Interest as and when required by this Plan at: (i) the address of such holder on the books and records of the Liquidating Debtors or their agents; (ii) at the address in any written notice of address change delivered to the Liquidating Debtors or Reorganized Debtors, as applicable, including any addresses included on any filed proofs of Claim or transfers of Claim filed pursuant to Bankruptcy Rule 3001 (provided that such transfer of Claim is docketed by the Bankruptcy Court on or before twenty-one (21) days prior to the Distribution Record Date).

The Liquidating Debtors or Reorganized Debtors, as applicable, will make all distributions or payments to any holder of an Allowed Pre-Petition Debenture Claim and Allowed Tranche B Loan Claim, as and when required by this Plan, to Pivotal Global Capacity, LLC as successor to the appropriate Pre-Petition Debenture Agent or Tranche B Agent, as applicable. The Purchaser will make all distributions or payments to any holder of an Allowed Mission Critical Vendor Claim as and when provided in the APA at: (i) the address of such holder on the books and records of the Liquidating Debtors or Reorganized Debtors, as applicable, or their agents; (ii) at the address in any written notice of address change delivered to the Purchaser, including any addresses included on any filed proofs of Claim or transfers of Claim filed pursuant to Bankruptcy Rule 3001 (provided that such transfer of Claim is docketed by the Bankruptcy Court on or before twenty-one (21) days prior to the Distribution Record Date).

In the event that any distribution to any holder is returned as undeliverable, no distribution or payment to such holder shall be made unless and until the applicable Liquidating Debtor or Reorganized Debtors, as applicable, or Purchaser, as applicable, has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter such distribution shall be made to such holder without interest, provided, however, such distributions or payments shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety days from the relevant Distribution Date. Any such undeliverable distribution, other than an undeliverable distribution to the holder of an Allowed Mission Critical Vendor Claim, shall be made available for distribution to the holders of the remaining Allowed Claims or Allowed Interests and no further payments shall be made to the holder of an Allowed Claim or Allowed Interests on account of such undeliverable distribution. Any undeliverable distribution on behalf of an Allowed Mission Critical Vendor Claim shall be distributed to Purchaser.

6.7. *Unclaimed Property.*

Holders of Allowed Claims or Allowed Interests shall have 120 days from the date of any Plan Distribution paid by check to negotiate such check. To the extent any such check is not negotiated within such time period, the payment on such check shall be stopped and the corresponding funds shall be made available to the Purchaser, and no further payments shall be made to the holder of an Allowed Claim or Allowed Interest on account of such unclaimed property and such Claim or Interest shall be treated as though such Claim or Interest has been disallowed. The Liquidating Debtors or Reorganized Debtors, as applicable, and Purchaser, as the case may be, shall have no obligation to attempt to locate any holder of an Allowed Claim or Allowed Interest other than by reviewing the Debtors' books and records, proofs of claim and proofs of interest filed against the Debtors or transfers of Claim filed pursuant to Bankruptcy Rule 3001 (provided that such transfer of Claim is docketed by the Bankruptcy Court on or before twenty-one (21) days prior to the Distribution Record Date).

6.8. *Undistributed Cash*

Other than "Unclaimed Property" subject to Article 6.7 of the Plan, all Cash that is not otherwise distributed in accordance with Article III of the Plan shall be distributed to Purchaser.

6.9. *Reserve Accounts.*

On or as soon as practicable after the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable, may establish and maintain separate reserve accounts for Disputed Claims or Disputed Interests against each Debtor if such were to become Allowed Claims or Allowed Interests if any Distributions to holders of such Claims or Interests are expected to be made.

6.10. *Satisfaction of Claims and Interests.*

Unless otherwise provided in the Plan, any distributions and deliveries to be made on account of Allowed Claims and Allowed Interests hereunder shall be in complete settlement, satisfaction and discharge of such Allowed Claims and Allowed Interests.

6.11. *Manner of Payment Under Plan.*

Except as specifically provided in the Plan, at the option of the Liquidating Debtors or Reorganized Debtors, as applicable, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

6.12. *Fractional Cents/Fractional Shares.*

Notwithstanding any other provision of the Plan to the contrary, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent. Notwithstanding any other provision of the Plan to the contrary, no fractional shares will be issued under this Plan and any fractional shares that otherwise would be distributed under this Plan will be rounded to nearest unit.

6.13. *No Distribution in Excess of Amount of Allowed Claim.*

Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a Plan Distribution in excess of the Allowed amount of such Claim.

6.14. *Setoffs and Recoupments.*

The Liquidating Debtors or Reorganized Debtors, as applicable, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off and/or recoup against any Allowed Claim, and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any and all claims, rights and Causes of Action that the Liquidating Debtors or Reorganized Debtors, as applicable, or their successors may hold against the holder of such Allowed Claim after the Effective Date; provided, however, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim hereunder will constitute a waiver or release by a Debtor, Liquidating Debtor or Reorganized Debtor, as applicable, or any successor of any and all claims, rights and Causes of Action that a Debtor, Liquidating Debtors or Reorganized Debtors, as applicable, or any successor may possess against such holder.

6.15. *Withholding and Reporting Requirements.*

In connection with this Plan and all distributions hereunder, the Liquidating Debtors or Reorganized Debtors, as applicable, shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Plan Distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Debtors or Reorganized Debtors, as applicable, shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of any Plan Distribution to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanisms the Liquidating Debtors or Reorganized Debtors, as applicable, believe are reasonable and appropriate, including requiring a holder of a Claim or Interest to submit appropriate tax and withholding certifications. Notwithstanding any other provision of this Plan: (i) each holder of an Allowed Claim or Allowed Interest that is to receive a distribution under this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations on account of such distribution; and (ii) no Plan Distributions shall be required to be made to or on behalf of such holder pursuant to this Plan if, after 120 days from the date of transmission of a written request to the holder of an Allowed Claim or Allowed Interest, the Debtors do not receive a valid, completed IRS form from such holder of an Allowed Claim or Allowed Interest, which is otherwise required for reporting purposes, and such holder shall be treated as if their Claims or Interests had been disallowed.

ARTICLE VII

PROCEDURES FOR RESOLVING CLAIMS

7.1. *Objections to Claims.*

The Liquidating Debtors or the Reorganized Debtors, as applicable, shall be entitled to object to Claims and Interests after the Effective Date, *provided, however*, the Liquidating Debtors or Reorganized Debtors may not object to (i) Mission Critical Vendor Claims, (ii) Claims that are Assumed Liabilities as to counterparties to contracts assumed and assigned to Purchaser under the APA, (iii) customers of the Business, and (iv) any other party determined by Purchaser in its sole discretion to be important to the operation of the Business, and designated by Purchaser prior to the Closing. Any objections to those Claims (other than Administrative Expense Claims) and Interests, shall be filed no later than one-hundred twenty (120) days after the Effective Date, subject to any extensions granted pursuant to further order of the Bankruptcy Court, which extensions may be obtained by the Liquidating Debtors or Reorganized Debtors, as applicable, without notice upon ex parte motion. Any Claims and Interests filed after the Bar Date shall be deemed disallowed and expunged in their entirety without further order of the Bankruptcy Court. Notwithstanding any authority to the contrary, an objection to a Claim or Interest shall be deemed properly served on the holder if the objecting party effects service in any of the following manners: (i) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (ii) by first class mail, postage prepaid, on the signatory on the proof of claim; or (iii) on any counsel that has appeared on the holder's behalf in the Bankruptcy Cases (so long as such appearance has not

been subsequently withdrawn). From and after the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable, in consultation with Purchaser, may settle or compromise any Disputed Claim or Disputed Interest without need for notice or approval of the Bankruptcy Court.

7.2. *Disputed Claims and Disputed Interests.*

(a) *No Distributions or Payments Pending Allowance.* Except as provided in Section 7.3, Disputed Claims and Disputed Interests shall not be entitled to any Plan Distributions unless and until such Disputed Claims or Disputed Interests become Allowed Claims or Allowed Interests.

(b) *Plan Distributions to Holders of Subsequently Allowed Claims and Allowed Interests.* On each Distribution Date (or such earlier date as determined by the Liquidating Debtors or Reorganized Debtors, as applicable, in their sole discretion but subject to Section 7.3), the Liquidating Debtors or Reorganized Debtors, as applicable, or Purchaser, as the case may be, will make distributions or payments: (i) on account of any Disputed Claim or Disputed Interest that has become an Allowed Claim or Allowed Interest since the occurrence of the previous Distribution Date; and (ii) on account of previously Allowed Claims or Allowed Interests of property that would have been distributed or paid to the holders of such Claims or Interests on the dates distributions previously were made to holders of Allowed Claims or Allowed Interests in such Class had the Disputed Claims or Disputed Interests that have become Allowed Claims or Allowed Interests been Allowed on such dates. The Liquidating Debtors or Reorganized Debtors, as applicable, or Purchaser, as the case may be, shall distribute in respect of such newly Allowed Claims or Allowed Interests the Plan Consideration as to which holders of such Claims or Interests would have been entitled under this Plan if such newly Allowed Claims or Allowed Interests were fully or partially Allowed, as the case may be, on the Effective Date, less direct and actual expenses, fees, or other direct costs of maintaining Plan Consideration on account of such Disputed Claims and Disputed Interests.

(c) *Distribution of Reserved Plan Consideration Upon Disallowance.* Except as otherwise provided in this Plan, to the extent any Disputed Claim or Disputed Interest has become Disallowed in full or in part (in accordance with the procedures set forth in the Plan), any Plan Consideration held by the Liquidating Debtors or Reorganized Debtors, as applicable, on account of, or to pay, such Disputed Claim or Disputed Interest, including amounts held in any reserve, shall become the sole and exclusive property of the Liquidating Debtors or Reorganized Debtors, as applicable, and shall be applied in accordance with the terms of this Plan.

7.3. *Estimation of Claims.*

For purposes of calculating and making distributions under the Plan, the Liquidating Debtors or Reorganized Debtors, as applicable, shall be entitled to estimate, in good faith and with due regard to litigation risks associated with Disputed Claims, the maximum dollar amount of Allowed and Disputed Claims, inclusive of contingent and/or unliquidated Claims in a particular Class. The Liquidating Debtors or Reorganized Debtors, as applicable, may request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the

Bankruptcy Code for purposes of determining the Allowed amount of such Claim regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim for purposes of determining the allowed amount of such Claim at any time. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim for allowance purposes, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the objecting party may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved or withdrawn by any mechanism approved by the Bankruptcy Court.

7.4. *No Recourse.*

Notwithstanding that the Allowed amount of any particular Disputed Claim or Disputed Interest is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by this Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims or Allowed Interests in the respective Class, no such holder shall have recourse against the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, Plan Administrator, the Purchaser, or any of their respective professionals, consultants, officers, directors, employees or members or their successors or assigns, or any of their respective property, or the Assets. However, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code, nor shall it modify or limit the ability, if any, of claimants to seek disgorgement to remedy any unequal distribution from parties other than those released under this section. THE ESTIMATION OF CLAIMS AND THE ESTABLISHMENT OF RESERVES UNDER THE PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.

7.5. *Expenses Incurred On or After the Effective Date.*

Except as otherwise ordered by the Bankruptcy Court, in accordance with Article 5.6(5) hereof, the reasonable fees and expenses of the Plan Administrator and the reasonable fees and expenses incurred by any Professional Person retained by the Liquidating Debtors on or after the Effective Date in connection with implementation of this Plan, including without limitation, reconciliation of objection to, and settlement of Claims, shall constitute Wind Down Costs and shall be paid in Cash by the Liquidating Debtors from proceeds available for such payments pursuant to the Plan.

ARTICLE VIII

MISSION CRITICAL VENDOR CONTRACTS, EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1. *General Treatment.*

To the extent not previously assumed or rejected pursuant to an earlier Sale Order,

(a) As of and subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors shall be deemed to be rejected by the applicable Debtor as of the Effective Date, except for any executory contract or unexpired lease that: (i) previously has been assumed and assigned or assumed pursuant to an order of the Bankruptcy Court; (ii) is designated in an APA as a contract or lease to be assumed or assumed and assigned to a Purchaser (such list of contracts and leases to be assumed, including post-petition contracts and leases assigned to Purchaser, the “**Schedules of Assumed Contracts and Leases**” attached to the APA as Schedules 2.1(b), 2.1(c)(i), 2.1(c)(ii)); or (iii) is the subject of a separate motion to assume or assume and assign or to reject under section 365 of the Bankruptcy Code pending on the Effective Date. For the avoidance of doubt, the Debtors may add any executory contract or unexpired lease to the Schedule of Assumed Contracts and Leases, thereby providing for the assumption or assumption and assignment of such executory contract or lease pursuant to the terms hereof, or move to reject any executory contract or unexpired lease (including any such contracts or leases on the Schedule of Assumed Contracts and Leases), thereby providing for its rejection pursuant to the terms hereof, at any time prior to the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assumptions and assignments, assignments of post-petition contracts and leases, and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Listing a contract or lease in the Schedule of Assumed Contracts and Leases or rejecting any contract or lease shall not constitute an admission by the applicable Debtor that the applicable Debtor has any liability thereunder.

(b) Subject to Section 8.2 of this Plan, entry of the Confirmation Order shall, subject to the occurrence of the Effective Date, constitute: (i) the approval, pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code, of the assumption and/or assumption and assignment of the executory contracts and unexpired leases assumed and/or assigned and the post-petition contracts and leases assigned pursuant to Section 8.1(a) and Section 8.1(b) of this Plan; and (ii) the approval, pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 8.1(a) and Section 8.1(b) of this Plan.

8.2. *Claims Based on Rejection of Executory Contracts or Unexpired Leases.*

(a) *Treatment:* Except as otherwise provided in the Plan, all Claims arising from the rejection of executory contracts or unexpired leases, if any, will be treated as Unsecured Claims. All such Claims shall be discharged on the Effective Date, and shall not be enforceable against the Debtors, the Liquidating Debtors, the Reorganized Debtors (if applicable), the Assets,

the Purchaser or their respective properties or interests in property (and, for the avoidance of doubt, such rejected contracts and leases shall not constitute Assumed Liabilities).

(b) *Deadline: To the extent not otherwise provided pursuant to an earlier Sale Order, each Person who is a party to a contract or lease rejected under the Plan must file with the Bankruptcy Court and serve on the Debtors or, if after the Effective Date, on the Liquidating Debtors or Reorganized Debtors, as applicable, no later than the earlier of (i) thirty (30) days after the entry of an order for the rejection of such contract or lease or (ii) thirty (30) days after the Effective Date, a proof of claim for damages alleged to arise from the rejection of the applicable contract or lease or be forever barred from filing a Claim, or sharing in distributions under the Plan, related to such alleged rejection damages.*

8.3. *Cure of Defaults for Assumed Mission Critical Vendor Contracts, Executory Contracts and Unexpired Leases.*

To the extent not previously assumed or rejected pursuant to an earlier Sale Order and, with respect to Cure Costs, to the extent not previously set pursuant to an earlier order of the Bankruptcy Court,

(a) *Assumption Notice:* The Debtors served a notice (the “**Assumption Notice**”) (which may be part of or included with the Schedule of Assumed Contracts and Leases) on the applicable counterparty of the potential, assumption, or assumption and assignment, of a executory contracts and unexpired leases that are anticipated to be assumed or assumed and assigned to a Purchaser (the “**Assumed Leases and Contracts**”) in connection with the Sale of the Assets and the amount, if any, that the Debtors contend is the amount needed to cure any defaults and to pay any pecuniary losses with respect to such Assumed Leases and Contracts in their October 31, 2010, Notice of Debtors’ Designation of Successful Bidder in Conjunction with Reorganization Plan, Rescheduled Sale Hearing, and Assumption and Assignment of Contracts, Executory Contracts and Unexpired Leases and Objection Deadline [DE 369] (the “**Cure Costs**”); provided however, if the Debtors identify additional mission critical vendor contracts, executory contracts and unexpired leases that might be assumed by the Debtors or assumed and assigned to a Purchaser, the Debtors will promptly send a supplemental Assumption Notice to the applicable counterparties to such contract or lease.

(b) *Time for Payment of Cure Costs:* Except to the extent otherwise set forth in the Assumption Notice or otherwise agreed in writing by the Debtors, Purchaser and the non-Debtor party or parties to each such Assumed Lease and Contract to be assigned to a Purchaser, the Purchaser (or the Debtors if so specified in the APA) shall cure any monetary defaults arising under each executory contract and lease to be assumed pursuant to the Plan and assigned to the Purchaser pursuant to Section 8.1(a) or Section 8.1(b) of this Plan, in accordance with section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Cost on the later of: (i) the Effective Date or as soon thereafter as is reasonably practicable; (ii) the date on which the Cure Cost has been resolved (either consensually or through judicial decision at the Cure Dispute Hearing, subject, in any such case, to the terms and conditions of any APA) or as soon thereafter as is reasonably practicable; and (iii) such other date as mutually agreed upon by the Debtors, Purchaser and the non-Debtor party or parties to each such Assumed Lease and Contract to be assigned to a Purchaser. To the extent an Assumed Lease or Contract is not to be assigned to a

Purchaser, the Debtors shall cure monetary defaults on the later of (i) the Effective Date or as soon thereafter as is reasonably practicable; (ii) the date on which the Cure Cost has been resolved (either consensually or through judicial decision at the Cure Dispute Hearing, subject, in any such case, to the terms and conditions of any APA) or as soon thereafter as is reasonably practicable; and (iii) such other date as mutually agreed upon by the Debtors and the non-Debtor party or parties to each such Assumed Lease and Contract.

(c) *Objections to Cure Costs:* Any party that failed to timely object to the applicable Cure Cost listed on the Assumption Notice by the deadline set forth in the Assumption Notice: (a) shall be forever barred, estopped and enjoined from (x) disputing the Cure Cost relating to any executory contract or unexpired lease set forth in the Assumption Notice, (y) asserting any Claim against the applicable Debtor or the Purchaser or their properties arising under section 365(b)(1) of the Bankruptcy Code other than as set forth on the Assumption Notice; and (b) shall be deemed to have consented to the assumption or the assumption and assignment of such executory contract and unexpired lease and shall be forever barred and estopped from asserting or claiming against the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, the Purchaser or any other assignee of the relevant executory contract or unexpired lease that any additional amounts are due or defaults exist, or conditions to assumption or assumption and assignment of such executory contract or unexpired lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise). Any objection relating to the Cure Cost shall specify the Cure Cost proposed by the counterparty to the applicable contract or lease.

(d) *Cure Dispute Hearing:* In the event of a timely objection (a “**Cure Dispute**”) regarding: (i) any Cure Cost; (ii) the ability of the Debtors or the Purchaser to demonstrate “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under any contract or lease to be assumed; or (iii) any other matter pertaining to the proposed assumption or assumption and assignment, a Hearing will be held by the Bankruptcy Court to consider any such objection (a “**Cure Dispute Hearing**”). The cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made at the time set forth in Section 8.3(b) of this Plan following the entry of a Final Order resolving such Cure Dispute and approving the assumption. To the extent a Cure Dispute relates solely to a Cure Cost, the applicable Debtor may assume or assume and assign the applicable contract or lease prior to the resolution of the Cure Dispute provided that the Purchaser (or the Debtors if such Assumed Contract or Lease is not to be assigned to a Purchaser) establishes a reserve containing Cash in an amount sufficient to pay the full amount asserted as cure payment by the non-Debtor party to such contract or lease (or such smaller amount as may be fixed or estimated by the Bankruptcy Court). To the extent the Cure Dispute is resolved or determined unfavorably to the applicable Debtor in its judgment, then such contract or lease shall not be assumed under the Plan and the Debtor, or the Liquidating Debtor or Reorganized Debtors, as applicable, if after the Effective Date, shall have the right to reject the applicable executory contract or unexpired lease effective as of the Effective Date after such determination at the Cure Hearing.

8.4. *Compensation and Benefit Programs*

To the extent any exist, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtors applicable to their

respective employees, retirees and non-employee directors including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life, accidental death and dismemberment insurance plans are treated as executory contracts under the Plan and on the Effective Date shall be rejected as the Effective Date.

ARTICLE IX

CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

9.1. *Conditions Precedent to Confirmation.*

(a) Confirmation of this Plan is subject to entry of the Confirmation Order by the Bankruptcy Court in form and substance reasonably acceptable to the Debtors, DIP Lenders and the Purchaser.

9.2. *Conditions Precedent to the Effective Date.*

The occurrence of the Effective Date is subject to the satisfaction of the following conditions precedent (or conditions subsequent with respect to actions that are to be taken contemporaneously with or immediately upon the occurrence of the Effective Date). With respect to the conditions set forth in (a), (b), and (d) below, the Debtors and the Purchaser may jointly waive any such condition. With respect to the conditions set forth in (c) below, only the Purchaser may waive any such condition.

(a) The Confirmation Order in form and substance reasonably acceptable to the Debtors, the DIP Lenders and Purchaser shall have become a Final Order, and shall not be stayed, provided that the Effective Date may occur if the Confirmation Order is not a Final Order at the option of the Purchaser;

(b) The Plan Documents, including any Management Agreement, shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by a Debtor that the Effective Date has occurred) contained therein shall have been satisfied or waived in accordance therewith;

(c) All material governmental, regulatory and third party approvals, authorizations, certifications, rulings, no action letters, opinions, waivers, and/or consents in connection with the Plan, if any, have been obtained (unless failure to do so will have a material adverse effect on the Debtors) and remain in full force and effect, and there exists no claim, action, suit, investigation, litigation or proceeding, pending or threatened in any court or before any arbitrator or governmental instrumentality, which would prohibit the consummation of the Plan;

(d) Closing on the Sale of the Assets shall have occurred or shall occur on the Effective Date, and the Liquidating Debtors or Reorganized Debtors, as applicable, shall have received from the Purchaser the Sale Proceeds.

(e) The Fee Claims due and unpaid on the Effective Date shall not exceed the Fee Payment Cap, as such Fee Payment Cap is reduced by U.S. Trustee's Fees and Wind Down Costs.

9.3. *Filing Notice of Effective Date.*

Within two (2) Business Days of the occurrence of the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable, shall file a notice of occurrence of the Effective Date signed by the counsel for the Debtors in Possession and, if different, counsel to the Liquidating Debtors or Reorganized Debtors, as applicable, in the record of the Bankruptcy Court reflecting (a) that the foregoing conditions to the occurrence of the Effective Date have been satisfied or waived by the Debtors and any other person whose consent or waiver is required, (b) the date of the Effective Date, and (c) acknowledging that the Effective Date has occurred on and as of such date.

ARTICLE X

EFFECT OF CONFIRMATION

10.1. *Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the Effective Date, the provisions of this Plan shall bind any holder of a Claim against, or Interest in, the Debtors and inure to the benefit of and be binding on such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under this Plan and whether or not such holder has accepted this Plan.

10.2. *Term of Pre-Confirmation Injunctions or Stays.*

Unless otherwise provided herein, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

10.3. *Injunction Against Interference With Plan.*

Upon the entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former affiliates, employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan.

10.4. *Injunction.*

(a) Except as otherwise provided in this Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtors or the Estates are, with respect to any such Claims or Interests, permanently enjoined after the Confirmation Date from: commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or

other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Assets, the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, or any of their property, or any direct or indirect transferee of any property of or direct or indirect successor in interest to, any of the foregoing Persons or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any pre judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Assets, the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, or any of their property, or any direct or indirect transferee of any property of or direct or indirect successor in interest to, any of the foregoing Persons including the Purchaser, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Assets, the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, the Purchaser or any of their property, or any direct or indirect transferee of any property of or successor in interest to, any of the foregoing Persons (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan to the full extent permitted by applicable law; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; provided, however, that nothing contained herein shall preclude such Persons from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of this Plan.

(b) By accepting distributions pursuant to this Plan, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the Injunctions set forth in this Section.

10.5. *Releases.*

(a) Releases by the Debtors. As of the Effective Date, and subject to its occurrence, for the good and valuable consideration provided by each of the Released Parties, any and all claims of the Debtors against any of the Released Parties based in whole or in part upon any act, omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date shall be forever released and discharged.

(b) Releases by Holders of Claims. Except as otherwise provided in this Plan or the Confirmation Order, on the Effective Date: (i) each holder of a Claim or Interest that voted to accept the Plan; and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all holders of Claims and Interests, in consideration for the obligations of the Debtors under this Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with this Plan, and each Person (other than the Debtors) that has held, holds or may hold a Claim or Interest, as applicable, shall be deemed to have unconditionally released the Released Parties from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

10.6. *Exculpation and Limitation of Liability.*

None of the Released Parties or the Liquidating Debtors or Reorganized Debtors, as applicable, or the Plan Administrator shall have any liability to any Entity for any act or omission in connection with or arising out of the negotiation of this Plan, the pursuit of approval of the Disclosure Statement, the pursuit of confirmation of this Plan, the consummation of this Plan, the transactions contemplated and effectuated by the Plan, the administration of this Plan, or the property to be distributed under either such plan or any other act or omission during the administration of the Chapter 11 Cases or the Debtors' Estates. In all respects, each of the foregoing shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

10.7. *Injunction Related to Releases and Exculpation.*

Upon the Effective Date, except as otherwise provided in the Plan, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to this Plan, including but not limited to the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Sections 10.5 and 10.6 of this Plan. Such injunction shall extend to Purchaser and their respective properties and interests in property.

10.8. *Discharge*

Except as otherwise provided in the Plan, to the fullest extent permitted by applicable law (a) on the Effective Date, the Confirmation Order will operate as a discharge under Bankruptcy Code section 1141(d)(1), and release of any and all Claims, debts (as such term is defined in Bankruptcy Code section 101(12)), Liens, security interests and encumbrances of and against all property of each of the Debtors that arose before confirmation, including without limitation, any Claim of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i) and all principal and interest, whether accrued before, on or after the Petition Date, regardless of whether (i) a proof of claim in respect of such Claim has been filed or deemed filed, (ii) such Claim has been Allowed pursuant to Bankruptcy Code section 502, or (iii) the holder of such Claim has voted on the Plan or has voted to reject the Plan; and (b) from and after the Confirmation Date, (x) all holders of Claims will be barred and enjoined from asserting against the Debtors entitled to such discharge pursuant to the Plan any Claims, debt (as defined in Bankruptcy Code section 101(12)), Liens, security interests and encumbrances of and against all property of each of the Debtors and (y) the Debtors will be fully and finally discharged of any liability or obligation on Disallowed Claims and Disallowed Interests. Except as otherwise specifically provided herein, nothing in the Plan will be deemed to waive, limit or restrict in any manner the discharge granted upon confirmation of the Plan pursuant to Bankruptcy Code section 1141.

10.9. *Retention of Causes of Action/Reservation of Rights.*

Except as expressly provided otherwise in the Plan, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims

or Causes of Action, rights of setoff, or other legal or equitable defenses that the Debtors had immediately prior to the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law.

10.10. *No Successor Liability.*

Except as otherwise expressly provided in the Plan or an APA, the Purchaser shall have no responsibility for any liabilities or obligations of the Debtors, the Liquidating Debtors, the Plan Administrator or any other party relating to or arising out of the operations of or Assets of the Debtors, arising prior to the Effective Date. The Purchaser is not, and shall not be deemed to be, a successor to any of the Debtors or Liquidating Debtors by reason of any theory of law or equity, and the Purchaser shall not have any successor or transferee liability of any kind or character, except that the Purchaser shall assume the Assumed Liabilities under the terms and subject to the conditions set forth in the Plan or an APA, and provided that if and to the extent the Reorganization Election is made, the Purchaser shall be the successor to the Debtors for regulatory and operational purposes, but all Claims and liabilities of the Debtors and their bankruptcy estates through the Closing Date and all Interests in the equity securities of the Debtors, except for the Assumed Liabilities, are still discharged under the Plan, and the Purchaser will have no Successor Liabilities under the Reorganization Election except to the extent of the Assumed Liabilities.

ARTICLE XI

RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain, to the fullest extent permitted by applicable law exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157 or otherwise, over all matters arising in, arising under, or related to the Bankruptcy Cases for, among other things, the following purposes:

- (a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the Cure Disputes resulting therefrom;
- (b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date;
- (c) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;
- (d) To consider Interests or the allowance, compromise or distributions on account of any Interest.
- (e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(f) To issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of this Plan, APA, the Confirmation Order, or any other order of the Bankruptcy Court;

(g) To hear and determine any application to modify this Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) To hear and determine all Fee Claims;

(i) To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(j) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, the APA, the Management Agreement, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(k) To take any action and issue such orders, including any such action or orders as may be necessary after occurrence of the Effective Date and/or consummation of the Plan, as may be necessary to construe, enforce, implement, execute, and consummate this Plan, including any release or injunction provisions set forth herein, or to maintain the integrity of this Plan following consummation;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(n) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(o) To resolve any disputes concerning whether a Person had sufficient notice of the Bankruptcy Cases, the Disclosure Statement Hearing, the Confirmation Hearing, any applicable Bar Date, or the deadline for responding or objecting to a Cure Cost, for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose;

(p) To recover any property of the Estates, wherever located;

(q) To determine any other matter not inconsistent with the Bankruptcy Code;
and

(r) To enter a final decree closing each of the Bankruptcy Cases.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. *Surrender of Instruments*

The Liquidating Debtors or Reorganized Debtors, as applicable, may in their discretion require as a condition to participation under this Plan, that the holder of a note, debenture or other evidence of indebtedness of the Debtors that desires to receive the property to be distributed on account of an Allowed Claim based on such note, debenture or other evidence of indebtedness shall surrender such note, debenture or other evidence of indebtedness to the Liquidating Debtors or Reorganized Debtors, as applicable, or their designee (unless such holder's Claim will be reinstated by this Plan, in which case such surrender shall not be required), and shall execute and deliver such other documents as are necessary to effectuate this Plan; provided, however, that if a claimant is a holder of an equity security, note, debenture or other evidence of indebtedness for which no physical certificate was issued to the holder but which instead is held in book-entry form then the Liquidating Debtors or Reorganized Debtors, as applicable or the indenture trustee for such equity security, note, debenture or other evidence of indebtedness shall waive the requirement of surrender. Except as otherwise provided in this section, if no required surrender of a security, note, debenture or other evidence of indebtedness occurs and a claimant does not provide an affidavit and indemnification agreement, in form and substance satisfactory to the Liquidating Debtors or Reorganized Debtors, as applicable, that such security, note, debenture or other evidence of indebtedness was lost, then no distribution may be made to any claimant whose Claim or Interest is based on such security, note, debenture or other evidence of indebtedness thereof.

12.2. *Exemption from Certain Transfer Taxes.*

To the fullest extent permitted by applicable law, all sale transactions consummated by the Debtors or the Liquidating Debtors or Reorganized Debtors, as applicable, including the transfers effectuated under this Plan, the sale by the Debtors or Liquidating Debtors or Reorganized Debtors, as applicable, Assets pursuant to section 363(b) of the Bankruptcy Code or this Plan, and any assumption, assignment, and/or sale by the Debtors of their interests in unexpired leases of non-residential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, shall constitute a "transfer under a plan" within the purview of section 1146 of the Bankruptcy Code, and shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

12.3. *Exemption From Securities Laws.* The New Common Stock, including the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, and any new equity securities that are issued to Purchaser by direct purchase of the Interests of Debtor Capital Growth Systems, Inc. and/or one or more of its subsidiaries, extinguishment of existing Interests and issuance of new shares to Purchaser, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of Capital Growth Systems, Inc. or one or more of its subsidiaries into any form of entity under the laws of any state, or otherwise in accordance with the Reorganization Election option in the Plan, shall be exempt from registration under any

federal, state or local law, rule or regulation pursuant to Section 1145 of the Bankruptcy Code or other applicable law. Any person who solicits or participates in the offer, issuance, sale or purchase of the New Common Stock, including the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, issued under this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule or regulation governing solicitation of acceptance or rejection of this Plan or the offer, issuance, sale or purchase of securities pursuant thereto. The Debtors have, and upon confirmation of this Plan shall be deemed to have, solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and the Debtors and the Purchaser (and their respective affiliates, agents, directors, managers, officers, employees, advisors, and attorneys) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale, and purchase of any securities offered and sold under this Plan, and therefore are not, and on account of such offer, issuance, sale, solicitation, and/or purchase shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or offer, issuance, sale, or purchase of the securities offered and sold under this Plan.

12.4. *Retiree Benefits.*

On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, payments in respect of retiree benefits (within the meaning of, and subject to the limitations of, section 1114 of the Bankruptcy Code), if any, at the level established in accordance with section 1114 of the Bankruptcy Code, at any time prior to the Confirmation Date, shall be continued for the duration of the period for which the Debtors had obligated themselves to provide such benefits. Nothing herein shall: (i) restrict Purchaser's right to modify the terms and conditions of the retiree benefits, if any, as otherwise permitted pursuant to the terms of the applicable plans, non-bankruptcy law, or section 1114(m) of the Bankruptcy Code; or (ii) be construed as an admission that any such retiree benefits are owed by the Debtors.

12.5. *Dissolution of Creditors' Committee.*

The Creditors' Committee shall be automatically dissolved upon entry of the Confirmation Order. All Fee Claims having been determined prior to the Confirmation and no Distributions being payable to unsecured creditors under the Plan, no further services by the Committee are needed. Except as otherwise provided in this Section 12.5, on the Effective Date, all members, employees or agents of the Creditors' Committee shall be released and discharged from all rights and duties arising from, or related to, the Bankruptcy Cases.

12.6. *Amendments/Changes of Plan Structure.*

(a) *Plan Modifications.* This Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims or Allowed Interests pursuant to this Plan, the Debtors may

remedy any defect or omission or reconcile any inconsistencies in this Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of this Plan, and any holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

(b) *Amendments to Accommodate Reorganization Election.* To accommodate the Plan structure determined by Purchaser, the Plan may be modified by notice filed with the Court at any time prior to the Effective Date to provide (i) for the change in the defined term “Liquidating Debtors” and the substitution of “Reorganized Debtors” in its place, as appropriate; (ii) for the retention of Assets by the Reorganized Debtors (rather than a sale of the Assets to Purchaser) and the continued operation of the Reorganized Debtors; (iii) for the issuance and distribution to holders of Claims and Interests of the New Common Stock and Preferred Stock in the Reorganized Debtors’ Parent (rather than in Newco) in the same percentages and on the same basis as provided in the Plan [**inapplicable under sale to Pivotal Global Capacity, LLC**]; (iv) for the elimination of the Plan Administrator and the vesting of the rights and duties to implement the Plan in the Reorganized Debtors rather than the Liquidating Debtors; (v) for the appointment of new officers, directors and managers, as applicable, of the Reorganized Debtors; (vi) for the assumption of, and payment of Cure Costs by, the Reorganized Debtors, of any Assumed Leases and Contracts (rather than the assignment thereof to, and payment of Cure Costs by, the Purchaser); and (vii) for other technical conforming changes in provisions of the Plan as deemed necessary by the Purchaser and Debtors to accommodate the change in structure thereof. The acquisition of the Purchased Assets may be accomplished indirectly, and the form of the acquisition may be an acquisition of the Interests of Debtor Capital Growth Systems, Inc. or one or more of its subsidiaries (which, in such event, would render the defined term “Purchased Assets” to include such Interests) by direct purchase of such Interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state. The Plan Consideration and the Plan Distribution shall not be adversely affected by such modifications. Confirmation of this Plan shall constitute findings and conclusions that such modifications shall be deemed to be non-material modifications to the Plan, no holders of Claims or Interests are adversely affected by such modifications, no additional disclosure shall be required with respect to such modifications, no re-solicitation shall be required as a result of such modifications, all acceptances and rejections of the Plan shall be unaffected by the modifications and, if the modifications are made after the Confirmation Hearing, no additional Confirmation Hearing shall be required with respect to such modifications, and the Plan, as so modified, shall constitute the Plan, as defined herein, for all purposes.

(c) *Amendments to Accommodate Sale of Assets.* In the event of a sale of the Assets pursuant to section 363 of the Bankruptcy Code prior to the Effective Date, upon motion by the Debtors (which may be heard on an expedited basis), the Debtors may modify the Plan prior to the Effective Date to provide for technical conforming changes to the Plan to reflect and accommodate the prior sale of the Assets. The Plan Consideration and the Plan Distribution shall not be adversely affected by such modifications. Confirmation of this Plan shall constitute findings and conclusions that the modifications shall be deemed to be non-material modifications to the Plan, no holders or Claims or Interests are adversely affected by such modifications, no additional disclosure shall be required with respect to such non-material modifications, no re-

solicitation shall be required as a result of the non-material modifications, all acceptances and rejections of the Plan shall be unaffected by the modifications and, if the modifications are made after the Confirmation Hearing, no additional Confirmation Hearing shall be required with respect to such modifications, and the Plan as so modified, shall constitute the Plan, as defined herein for all purposes.

(d) *Other Amendments.* Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court; provided, however, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Interests under the Plan.

Notwithstanding the foregoing provisions of Article 12.6, no amendment to this Plan shall be effective unless it has been agreed to in writing by the Purchaser.

12.7. *Pooling of Assets*

This Plan is premised upon the pooling of the Assets of the Debtors solely for purposes of actions associated with the confirmation and consummation of the Plan, including, but not limited to, voting, confirmation and distribution. In connection herewith, each and every Claim filed or to be filed in the Chapter 11 Cases against any of the Debtors shall be deemed a single consolidated Claim against and obligation of all the consolidated Debtors. The Plan does not contemplate the merger or dissolution of any of the Debtors or the transfer or commingling of any Assets of any of the Debtors, except to accomplish the distributions under the Plan. Such pooling of Assets shall not affect (other than for Plan voting, treatment, and/or distribution purposes) (i) the legal and corporate structures of the Debtors or the Reorganized Debtors or (ii) any guarantees that may be required to be provided on and after the Effective Date.

12.8. *Revocation or Withdrawal of this Plan.*

Subject to the provisions of the Plan Support Agreement [**inapplicable to transaction with Pivotal GC**], the Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date. If the Debtors revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors, or if confirmation or the Effective Date as to any or all of the Debtors does not occur, then, with respect to such Debtors: (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person or (iii) constitute an admission of any sort by the Debtors or any other Person.

12.9. *Allocation of Plan Distributions Between Principal and Interest.*

To the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such

distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

12.10. *Severability.*

If, prior to the entry of the Confirmation Order, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.11. *Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent a Plan Document or exhibit or schedule to the Plan provides otherwise, the rights, duties, and obligations arising under this Plan and the Plan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

12.12. *Inconsistency.*

In the event of any inconsistency among the Plan, the Disclosure Statement, the Plan Documents, any exhibit to the Plan or any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern.

12.13. *Insurance*

Nothing in the Plan will diminish or impair the enforceability of any policies of insurance that may cover Claims against or Interests in the Estates, the Debtors or any related Person. Holders of Claims that are eligible to be satisfied, in whole or in part, through any such policy will be obligated, as a condition to receiving any distributions under the Plan, to seek recovery or assist the Debtors, Reorganized Debtors, Liquidating Debtors, Purchaser, and Plan Administrator, as applicable, in seeking recovery under such policies with regard to such Claims.

12.14. *Successors and Assigns.*

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of the heirs, executors, administrators, successors and/or assigns of such Person.

12.15. *Time.*

In computing any period of time prescribed or allowed by this Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.16. *Credit Bid*

Nothing in this Plan shall impair or otherwise alter the rights of the DIP Lenders and Pre-Petition Debenture Lenders to credit bid with respect to any sale of the Assets or the Debtors' equity under either a sale pursuant to section 363(k) of the Bankruptcy Code or this Plan.

12.17. *Exhibits.*

All exhibits to this Plan are incorporated and are a part of this Plan as if set forth in full herein.

12.18. *Notices.*

In order to be effective, all notices, requests, and demands to or upon the Liquidating Debtors from and after the Effective Date shall be in writing (including by email or facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by email or facsimile transmission, when received and confirmed, addressed as follows:

To the Debtors:

GLOBAL CAPACITY HOLDCO, LLC
Attn: Patrick Shutt
200 S. Wacker Drive, Suite 1650
Chicago, Illinois 60608
Telephone: (312) 660.5097
pshutt@globalcapacity.com

-and-

HELLER DRAPER HAYDEN PATRICK & HORN, LLC
Attn: Douglas S. Draper, Esq.
ddraper@hellerdraper.com
650 Poydras Street – 25th Floor
New Orleans, LA 70130
Telephone: (504) 299-3300
Facsimile: (504) 299-3399
Counsel to the Debtors and Debtors in Possession

-and-

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
Attn.: Francis A. Monaco, Jr.
fmonaco@wcsr.com
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
Counsel to the Debtors and Debtors in Possession

To the Pre-Petition Debenture Holders and DIP Lenders:

LEWIS AND ROCA LLP
Attn: Susan M. Freeman
Dawn M. Cica
40 N. Central Ave., Suite 1900
Phoenix, AZ 85004-4429
Telephone: (602) 262-5756 (Freeman)
Telephone: (702) 949-8257 (Cica)
SFreeman@LRLaw.com
DCica@LRLaw.com

and

PACHULSKI STANG ZIEHL & JONES LLP
Attn: Laura Davis Jones
Timothy Cairns
919 N. Market Street, 17th Floor
Wilmington, DE 19899-8705
Telephone: (302) 652-4100
LJones@pszjlaw.com
TCairns@pszjlaw.com

12.19. *Reservation of Rights.*

Except as expressly set forth herein, the Plan shall have no force or effect until the Effective Date. Neither the filing of this Plan, or any statement or provision contained herein, or the taking of any action by the Debtors with respect to this Plan, shall be or shall be deemed to be, an admission or waiver of any rights of the Debtors with respect to any Claims or Interests prior to the Effective Date.

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Dated January __, 2011

/s/ Patrick Shutt
Global Capacity Holdco, LLC
By: Patrick Shutt

/s/ Patrick Shutt
Global Capacity Group, Inc.
By: Patrick Shutt

/s/ Patrick Shutt
20/20 Technologies, Inc.
By: Patrick Shutt

/s/ Patrick Shutt
Capital Growth Systems, Inc.
By: Patrick Shutt

/s/ Patrick Shutt
Centre Path, Inc.
By: Patrick Shutt

/s/ Patrick Shutt
Global Capacity Direct, LLC f/k/a
Vanco Direct USA, LLC
By: Patrick Shutt

/s/ Patrick Shutt
20/20 Technologies I, LLC
By: Patrick Shutt

/s/ Patrick Shutt
NEXVU Technologies, LLC
By: Patrick Shutt

/s/ Patrick Shutt

FNS 2007, Inc. fka Fronrunner

Network Systems, Corp

By: Patrick Shutt

/s/ Patrick Shutt

Capital Growth Acquisition, Inc.

By: Patrick Shutt

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	§ Chapter 11
	§ (Jointly Administered)
GLOBAL CAPACITY HOLDCO, LLC,	§
<u>et al.</u> ¹	§ Case No. 10-12302 (PJW)
	§
Debtors.	§
	§

**JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR GLOBAL CAPACITY
HOLDCO, LLC AND ITS FILED AFFILIATES DATED AS OF AUGUST 11, 2010, AND
MODIFIED AS OF JANUARY -, 2011**

Nothing contained herein shall constitute an offer, acceptance or a legally binding obligation of the Debtors or any other party in interest unless and until this Plan is approved by the Bankruptcy Court and other customary conditions are met. This Plan is not an offer with respect to any securities. This is not a solicitation of acceptances or rejections of the Plan. Acceptances or rejections with respect to this Plan may not be solicited until a disclosure statement has been approved by the United States Bankruptcy Court for the District of Delaware. Such a solicitation will only be made in compliance with applicable provisions of securities and/or bankruptcy laws. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE (INCLUDING IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES) PRIOR TO THE APPROVAL OF THIS PLAN BY THE BANKRUPTCY COURT.

Dated: ~~August 11, 2010~~ January -, 2011

**HELLER DRAPER HAYDEN PATRICK
& HORN LLC**
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fmonaco@wcsr.com
mdesgrosseilliers@wcsr.com
Local Counsel for Debtors and

¹-The Debtors in these cases, along with their case numbers, addresses, and the last four digits of each Debtor's federal tax identification number, are: Global Capacity Holdco, LLC, 200 S. Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12302) (8858); Global Capacity Group, Inc., 730 North Post Oak Road, Houston, TX 77024 (10-12303) (0073); 20/20 Technologies, Inc., 200 South Wacker, Suite 1650, Chicago, IL 60606 (10-12304) (5612); Centrepath, Inc., 275 Winter Street, Waltham, MA 02451 (10-12305) (9034); Capital Growth Systems, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12306) (3505); Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12307) (1970); FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12308) (7892); Nexvu Technologies, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12309) (4626); Capital Growth Acquisition, Inc., 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12311) (4116); and 20/20 Technologies I, LLC, 200 South Wacker Drive, Suite 1650, Chicago, IL 60606 (10-12310) (5514).

INTRODUCTION²

Global Capacity Holdco, LLC, Global Capacity Group, Inc., 20/20 Technologies, Inc., Centrepath, Inc., Capital Growth Systems, Inc., Global Capacity Direct, LLC (f/k/a Vanco Direct USA, LLC), FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), Nexvu Technologies, LLC, Capital Growth Acquisition, Inc., and 20/20 Technologies I, LLC, Debtors and Debtors in possession in these bankruptcy cases under chapter 11 of the Bankruptcy Code, propose the following Joint Chapter 11 Plan (“Plan”) with respect to each of their Bankruptcy Cases. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, risk factors, a summary and analysis of this Plan, and certain related matters including, among other things, certain tax matters, the sale or disposition of the Debtors’ assets and the consideration to be issued and/or distributed under this Plan.

All Persons are encouraged to read the Plan and the Disclosure Statement and their respective exhibits in their entirety before voting to accept or reject the Plan. No materials other than the Disclosure Statement and the respective exhibits attached thereto and referenced therein have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

ARTICLE I

DEFINITIONS AND INTERPRETATION

A. Definitions.

The following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural):

1.1 ***Administrative Expense Claim*** means a claim for costs and expenses of administration of the Bankruptcy Cases under section 503(b) (including “substantial contribution” claims under section 503(b)(3) and (4)) of the Bankruptcy Code entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code.

1.2 ***Administrative Expense Claims Bar Date*** means the deadline for filing an Administrative Expense Claim established pursuant to Section 2.1 of this Plan or any other order of the Bankruptcy Court.

1.3 ***Allowed*** shall mean, with respect to any Claim against or Interest in any Debtor, a Claim or Interest (a) proof of which is timely Filed (or by order of the Bankruptcy Court or as otherwise provided herein is not required to be Filed), (b) that is listed by such Debtor in its Schedules as liquidated in amount, non-disputed and non-contingent and for which no proof of claim has been Filed, or (c) expressly allowed pursuant to this Plan or any Final Order of the Bankruptcy Court; and, in each case with respect to (a) and (b) above, either (i) no objection to

² All capitalized terms in the Introduction used but not defined in the Introduction have the meanings set forth in Article I herein.

its allowance, amount, or classification (or an amendment of the Schedules with respect thereto) has been interposed within the applicable period for filing same fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or (ii) such objection (or an amendment of the Schedules with respect thereto), if so interposed, has been determined and fixed by a Final Order (but only to the extent so determined and fixed and not where fixed and allowed solely for purposes of voting to accept or reject the Plan). Claims that are not Allowed or are disallowed by Final Order or otherwise, including those disallowed under section 502(d) of the Bankruptcy Code, shall not be Allowed Claims.

1.4 ***Allowed Claim or Allowed Interest*** means a Claim or Interest to the extent that it has been Allowed.

1.5 ***APA*** means either: (i) the Asset Purchase Agreement with Newco [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#); or (ii) any other asset purchase agreement(s) that the Debtors may execute with a Person that submits the highest or otherwise best bid for the Assets, [which the Debtors have determined to be the Asset Purchase Agreement submitted by Pivotal Global Capacity, LLP pursuant to the Auction and thereafter modified and filed with the Court on January 12, 2011,](#) and, with respect to both (i) and (ii), is approved by order of the Bankruptcy Court and consummated.

1.6 ***Acquired Assets*** means all Assets acquired by Purchaser pursuant to the APA.

1.7 ***Assets*** means all of the right, title and interest of the Debtors pursuant to section 541 of the Bankruptcy Code in and to property [or Interests](#) of whatever type or nature (real, personal, mixed, intellectual, tangible or intangible), including Causes of Action and all other property of the Debtors.

1.8 ***Assumed Liabilities*** means any liabilities of the Debtors, including any executory contracts, assumed by a Purchaser in accordance with the APA or order of the Bankruptcy Court [and includes, for Pivotal Global Capacity LLC as Purchaser, postpetition accrued and unbilled \(a\) obligations under assumed Contracts and Real Property Leases and \(b\) Taxes of Governmental Units which will be paid when invoiced and due in the ordinary course after Closing.](#)

1.9 ***Auction*** means the auction for the Assets to be held in accordance with the Auction Sale Order, as necessary.

1.10 ***Auction Sale Order or Sale Order*** means the order entered on the Bid Procedures Motion.

1.11 ***August 2009 Debentures*** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the pre-petition variable rate secured convertible debentures of Capital Growth Systems, Inc. issued on August 27, 2009.

1.12 ***August Debenture Agent*** means Aequitas Capital Management, Inc. [or its successor.](#)

1.13 **August Debenture Distribution** means, for each holder of an August Debenture Secured Claim on the Effective Date, (i) in the event that Newco is the Purchaser, the Series B Preferred Stock Distribution [inapplicable under sale to Pivotal Global Capacity, LLC]; and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder.

1.14 **August Debenture Secured Claims** means any Secured Claims of any holder of an August 2009 Debenture arising under the August 2009 Debentures and related Pre-Petition Debenture Agreements.

1.15 **Avoidance Actions** means all of the Debtors' and the Estates' rights and claims under sections 547 through 553 of the Bankruptcy Code, inclusive, or under any similar or related state or federal statute or common law, whether or not an action is initiated before or after the Effective Date.

1.16 **Ballot** means the form to be distributed with the Disclosure Statement to each holder of an Impaired Claim or Impaired Interest on which the holder is to indicate acceptance or rejection of the Plan.

1.17 **Balloting Deadline** means the date and time, as set by an order of the Bankruptcy Court or in the Disclosure Statement, by which all Ballots must be received in order to be counted for purposes of voting on the Plan, as such date may be extended by an order of the Bankruptcy Court.

1.18 **Bankruptcy Cases** or **Chapter 11 Cases** means these cases for relief filed by the Debtors under Chapter 11 of the Bankruptcy Code, which are pending before the Bankruptcy Court and have been consolidated for joint administration as Case No. 10-12302 (Jointly Administered).

1.19 **Bankruptcy Code** means Title 11 of the United States Code, or the Bankruptcy Reform Act of 1978, as amended.

1.20 **Bankruptcy Court** means the United States Bankruptcy Court for the District of Delaware, or, to the extent applicable, any other court exercising competent jurisdiction over the Bankruptcy Cases or any proceeding therein.

1.21 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Bankruptcy Cases, and any Local Rules of the Bankruptcy Court.

1.22 **Bar Date** means the deadline for filing proofs of Claim or Interest that arose or are deemed to arise on or before the Petition Date, as established by the Plan or other order of the Bankruptcy Court.

1.23 **Bid Procedures** means the bid procedures for the Sale, as set forth in the Auction Sale Order.

1.24 **Bid Procedures Motion** means the motion of the Debtors seeking an order: (i) approving the Bid Procedures with respect to the sale of the Assets; (ii) approving the Stalking Horse Bidder and bid protections with respect to a Stalking Horse Bidder; (iii) approving the assumption, assignment and/or transfer procedures with respect to executory contracts or unexpired leases of the Debtors; and (iv) as may be necessary, scheduling an auction and approving the form and manner of notice thereof (with the Bid Procedures Motion and items (i) through (iv) being in form and substance reasonably acceptable to the Participating Debenture Holders).

1.25 **Budget** means the budget annexed to the DIP Facility as Exhibit A thereto.

1.26 **Business Day** means any day other than a Saturday, Sunday or federal holiday in the United States.

1.27 **Cash** means legal tender of the United States of America.

1.28 **Causes of Action** means, without limitation, any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, debts, sums of money, damages, judgments, claims and demands, actions, defenses, offsets, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whatsoever, whether known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or tort, in law, equity or otherwise, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable in favor of the Debtors, their Estates or the Liquidating Debtors or Reorganized Debtors, as applicable. For avoidance of doubt, Causes of Action include, but are in no way limited to, claims or rights to (a) damages, (b) the recovery of monies, (c) lien avoidance, subordination, surcharge, recharacterization, rights of setoff, counterclaim or recoupment, and claims on contracts or for breaches of duties imposed by law, (d) tax refunds, (e) injunctive, equitable, or other relief, (f) claims pursuant to section 362 of the Bankruptcy Code, (g) such claims and defenses as fraud, mistake, duress, and usury, (h) Avoidance Actions, (i) Retained Causes of Action, and (j) all causes of action that may be directly or derivatively asserted on behalf of the Debtors, their Estates, or the Liquidating Debtors or Reorganized Debtors, as applicable.

1.29 **Claim** shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

1.30 **Class** means a category of holders of Claims or Interests classified together pursuant to section 1123(a)(11) of the Bankruptcy Code.

1.31 **Confirmation Date** means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

1.32 **Confirmation Hearing** means the hearing held pursuant to section 1128(a) of the Bankruptcy Code at which the Bankruptcy Court considers confirmation of the Plan, including any continuances thereof.

1.33 **Confirmation Objection Deadline** means the first deadline set for the filing of objections to the confirmation of the Plan.

1.34 **Confirmation Order** means the order of the Bankruptcy Court that confirms the Plan.

1.35 **Credit Bid** means a bid, pursuant to section 363(k) of the Bankruptcy Code, for substantially all of the Assets by [Pivotal Global Capacity, LLC as assignee and successor to the ~~Franchise B Agent~~ DIP Lenders](#) and the Pre-Petition Debenture ~~Agents~~[Lenders, of DIP Claims, DIP Claims and Pre-Petition Debenture Claims, to the extent designated by Pivotal Global Capacity, LLC in the APA.](#)

1.36 **Creditors' Committee** means any statutory committee of unsecured creditors appointed in the Bankruptcy Cases in accordance with section 1102 of the Bankruptcy Code, as the same may be reconstituted from time to time.

1.37 **Cure Costs** means the amount required pursuant to section 365(b) of the Bankruptcy Code to cure any defaults in an executory contract or unexpired lease to be assumed by the Debtors and assigned to Purchaser, as determined by a Final Order of the Bankruptcy Court.

1.38 **Cure Dispute Hearing** means a hearing before the Bankruptcy Court to resolve the amount of any Cure Cost.

1.39 **Debtors** means Global Capacity Holdco, LLC, Global Capacity Group, Inc., 20/20 Technologies, Inc., Centrepath, Inc., Capital Growth Systems, Inc., Global Capacity Direct, LLC fka Vanco Direct USA, LLC, FNS 2007, Inc. (fka Frontrunner Network Systems, Corp.), NEXVU Technologies, LLC, 2020 Technologies I, LLC, and Capital Growth Acquisition, Inc.

1.40 **Debtors in Possession** means the Debtors between the Petition Date and the Effective Date.

1.41 **Debtors' Parent** means Capital Growth Systems, Inc.

1.42 **Debtors' Parent Interests** means any "equity security" (as defined in Section 101(16) of the Bankruptcy Code) in Debtors' Parent and, for purposes of illustration and not limitation, shall include all warrants, options, convertible debentures, and shares of stock issued or outstanding in or by the Debtors' Parent as of the Effective Date.

1.43 **Debtors' Retained Causes of Action** means those Retained Causes of Action, which are retained by the Reorganized Debtors or the Liquidating Debtors, as applicable, and are not transferred to the Purchaser under the APA.

1.44 **Deficiency Claim** means the unsecured deficiency claim of a holder of a Secured Claim determined pursuant to 11 U.S.C. §506(a) or as provided in this Plan.

1.45 **DIP Claims** means all obligations of the Debtors arising out of or in connection with the DIP Facility (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order).

1.46 **DIP Facility** means that certain Debtor in Possession Loan and Security Agreement by and among the Debtors, as the borrowers, and the DIP Lenders, as amended from time to time and the Loan Documents (as defined therein).

1.47 **DIP Lenders** means [Pivotal Global Capacity, LLC as assignee and successor to the Tranche A DIP Lender and the Tranche B DIP Lenders.](#)

1.48 **Disallowed Claim** means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order or a settlement, (b) a Claim or any portion thereof that is Scheduled at zero or as contingent, disputed, or unliquidated and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) a Claim or any portion thereof that is not Scheduled and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

1.49 **Disallowed Interest** means an Interest or any portion thereof that has been disallowed by a Final Order or by a settlement between the holder thereof and the Debtors or, if after the Effective Date, the Liquidating Debtors [or Reorganized Debtors, as applicable.](#)

1.50 **Disbursing Agent** means, for purposes of making distributions under the Plan, the Liquidating Debtors or [Reorganized Debtors, as applicable, or](#) the Plan Administrator.

1.51 **Disclosure Statement** means the Disclosure Statement for the Debtors to accompany the Plan, as modified or amended, approved by the Bankruptcy Court ~~on []~~, [2010](#).

1.52 **Disclosure Statement Order** means an order of the Bankruptcy Court (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving the Form and Manner of Solicitation; (B) Approving the Form and Manner of Notice of the Confirmation Hearing; (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages; (D) Approving Form of Ballots; (E) Establishing Deadline for Receipt of Ballots; and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections to (A) Confirmation of the Plan; and (B) Proposed Cure Amounts Related to Contracts and Leases Assumed Under the Plan; and (IV) Granting Related Relief entered by the Bankruptcy Court.

1.53 **Disputed Claim or Disputed Interest**, means any Claim or Interest, that is not either an Allowed Claim or a Disallowed Claim, or an Allowed Interest or a Disallowed Interest, as the case may be. In the event that any part of a Claim or Interest is disputed, such Claim or Interest in its entirety shall be deemed to constitute a Disputed Claim or Disputed Interest for purposes of distribution under this Plan unless (a) a Final Order has been entered providing otherwise or (b) as otherwise agreed between the holder thereof and the Debtors or, if after the Effective Date, the Liquidating Debtors [or Reorganized Debtors, as applicable.](#) Without limiting

any of the foregoing, a Claim or Interest that is the subject of a pending objection, motion, complaint, counterclaim, setoff, Avoidance Action, litigation claim or other defense, or any other proceeding seeking to disallow, subordinate or estimate such Claim, shall be deemed to constitute a Disputed Claim or Disputed Interest, as the case may be.

1.54 **Distribution Date** means: (a) the Initial Distribution Date; (b) any Interim Distribution Date; or (c) the Final Distribution Date, as the context requires.

1.55 **Distribution Record Date** means, with respect to all Classes, the third (3rd) Business Day after the date the Confirmation Order is entered by the Bankruptcy Court or such other date as shall be established by the Bankruptcy Court in (a) the Confirmation Order or, (b) upon request of the Debtors or the Liquidating Debtors or Reorganized Debtors, as applicable, a separate order of the Bankruptcy Court.

1.56 **Effective Date** means the first Business Day on which all conditions to the Effective Date set forth in Section 9.2 hereof have been satisfied or waived (or will be satisfied contemporaneously with or immediately upon the occurrence of the Effective Date) and no stay of the effectiveness of the Confirmation Order is in effect.

1.57 **Entity** means an individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code) or any political subdivision thereof, or other person.

1.58 **Estates** means the estates created in the Bankruptcy Cases under section 541 of the Bankruptcy Code.

1.59 **Exit Capital Requirements Plan Funding** means funding (a) by Newco in accordance with Schedule 2 of the Plan Support Agreement (attached hereto as Exhibit A) [inapplicable under sale to Pivotal Global Capacity, LLC] or, (b) if a Restructuring Election is made by Newco, in an amount needed (i) to pay Allowed Administrative Expense Claims, Tranche A DIP Facility Claims, Allowed Fee Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Cure Costs, Assumed Liabilities [inapplicable under sale to Pivotal Global Capacity, and LLC], or (c), with respect to a Purchaser other than Newco [applicable under sale to Pivotal Global Capacity, LLC], to pay Allowed Administrative Expense Claims in Agreed Amounts including Allowed Fee Claims in Agreed Amounts within the aggregate amount provided for such purposes in the APA, Tranche A DIP Facility Claims, Tranche B DIP Facility Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Cure Costs, Assumed Liabilities; and (ii) to provide a sufficient reserve for the payment of Wind Down Costs in accordance with the Wind Down Budget, whether effected as a transfer of Assets or under a Restructuring Election.

1.60 **Fee Claim** means a Claim by a Professional for compensation, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) (excluding any fees or expenses under sections 503(b)(3) or (4)) or 1103(a) of the Bankruptcy Code in connection with the Bankruptcy Cases. For the avoidance of doubt, fees or expenses sought under sections 503(b)(3) or (4) or payable under section 506(b) are not Fee Claims.

1.60a *Fee Payment Cap* shall mean the sum of \$1,500,000 payable at the Closing (reduced by any pre-Closing discretionary advances, per Section 2.3(b)) by Pivotal Global Capacity, LLC to be used to satisfy Fee Claims, U.S. Trustee Fees for the post-Closing period and the distributions made in connection with the Closing and Wind Down Budget obligations.

1.61 *File or Filed* mean filed with the Bankruptcy Court in the Bankruptcy Cases, as reflected on the official docket of the Bankruptcy Court for the Bankruptcy Cases.

1.62 *Final DIP Financing Order* means the Final Order Granting Emergency Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) and (2), and 364(e), Fed.R.Bankr.P. 2002, 4001, and 9014: (I) Authorizing Debtors to Obtain Postpetition Financing on Superpriority and Secured Basis, (II) Permitting the Use of Cash Collateral, (III) Granting Interim Relief, And (IV) Scheduling a Final Hearing Under Fed.R.Bankr.P. 4001(c) [~~P~~—DE 125].

1.63 *Final Distribution Date* means the first Business Day twenty (20) days (or such longer or shorter period as may be reasonably determined by the Liquidating Debtors or Reorganized Debtors, as applicable) after the date on which all Disputed Claims have been resolved by Final Order and all Assets have been liquidated or otherwise disposed of in accordance with the Plan and on which a final Plan Distribution is made to relevant Allowed Claim or Allowed Interest holders as required under this Plan.

1.64 *Final Order* means an order or judgment of the Bankruptcy Court or other applicable court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall have been affirmed by the highest court to which such order or judgment was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or motion for reargument or rehearing shall have expired, with no further appeal, petition for certiorari or motion for reargument or rehearing pending; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule of the Bankruptcy Rules, may be filed with respect to such order or judgment shall not render such order or judgment not to be a Final Order.

1.65 *Fully-Diluted Basis* means as if all shares of the Series C Preferred Stock, the Series B Preferred Stock and the Series A Preferred Stock were converted to New Common Stock in accordance with the respective terms of such preferred stock.

1.66 *Impaired* means a Claim or Interest or a Class of Claims or a Class of Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.67 *Initial Distribution Date* means the first Business Day three (3) business days after the Effective Date, or such longer or shorter period as may be reasonably determined by the

Liquidating Debtors or Reorganized Debtors, as applicable, to make initial Plan Distributions under the Plan.

1.68 **Interest** means any and all “equity securities” (as defined in section 101(16) of the Bankruptcy Code) in a Debtor and, for purposes of illustration and not limitation, shall include all warrants, options, convertible debentures, and shares of stock issued or outstanding in or by any Debtor as of the Petition Date.

1.69 **Intercompany Claims** means any Claim that is held or asserted by a Debtor against another Debtor.

1.70 **Interim DIP Financing Order** means the Interim Order Granting Emergency Motion for Order Under 11 U.S.C. §§ 105, 363, 364(c)(1) and (2), and 364(e), Fed.R.Bankr.P. 2002, 4001, and 9014: (I) Authorizing Debtors to Obtain Postpetition Financing on Superpriority and Secured Basis, (II) Permitting the Use of Cash Collateral, (III) Granting Interim Relief, And (IV) Scheduling a Final Hearing Under Fed.R.Bankr.P. 4001(c) [P-22].

1.71 **Interim Distribution Date** means any date, other than the Final Distribution Date, after the Initial Distribution Date, on which the Liquidating Debtors or Reorganized Debtors, as applicable, determine that an interim distribution should be made to or on account of holders of Allowed Claims or Allowed Interests, in light of, *inter alia*, resolutions of Disputed Claims or Disputed Interests, and the administrative costs of such a distribution.

1.72 **July 2009 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about July 31, 2009 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto, other than the August 2009 Debentures.

1.73 **July Debenture Agent** means Aequitas Capital Management, Inc. (definition no longer applicable) or its successor in interest.

1.74 **July Debenture Distribution** means, for each holder of a July Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series B Preferred Stock Distribution; [inapplicable under sale to Pivotal Global Capacity, LLC] and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder [inapplicable under sale to Pivotal Global Capacity, LLC].

1.75 **July Debenture Secured Claims** means any Secured Claims, other than the August Debenture Secured Claims, arising pursuant to that certain Securities Purchase Agreement dated on or about July 31, 2009 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest on the Effective Date.

1.76 **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.77 **Liquidating Debtors** means the Debtors upon and after the Effective Date, which for purposes of the Plan, shall receive the Sales Proceeds for purposes of distribution and

effectuating the Wind Down, and shall operate the Non-Transferred Assets pursuant to the Management Agreement unless the Reorganization Election is made.

1.78 **Management Agreement** means the management agreement (if any) annexed to or otherwise provided for in the APA pursuant to which Purchaser, through the Liquidating Debtors, shall operate the Non-Transferred Assets subsequent to closing on the Sale until such Non-Transferred Assets are transferred to Purchaser.

1.79 **March 2008 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about March 11, 2008 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest on the Effective Date.

1.80 **March Debenture Agent** means Enable Growth Partners LP. (definition no longer applicable) or its successor in interest.

1.81 **March Debenture Distribution** means, for each holder of a March Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series A Preferred Stock Distribution [inapplicable under sale to Pivotal Global Capacity, LLC]; and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder [inapplicable under sale to Pivotal Global Capacity, LLC].

1.82 **March Debenture Secured Claims** means any Secured Claims arising pursuant to that certain Securities Purchase Agreement, dated March 11, 2008, among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest on the Effective Date.

1.83 **Mission Critical Vendor Claims** means all claims to be assumed by Purchaser pursuant to an Exhibit to the APA, including, but not limited to, the utility vendors' claims set forth in the Utility Motion and critical vendors' Claims.

1.84 **Net Cash Sale Proceeds** means the Cash portion of the Sale Proceeds- subject to rights of any Purchaser to Credit Bid, less the Exit Capital Requirement Plan Funding.

1.85 **New Common Stock** means the common stock or other equity securities in Purchaser (or, in the event of a Reorganization Election, the Reorganized Debtor Parent) issued by Newco in accordance with the consummation of the Plan, which shall constitute 100% of the issued and outstanding equity securities of the issuer [inapplicable under sale to Pivotal Global Capacity, LLC].

1.86 **New Common Stock Pool** means ten per cent (10%) of the outstanding shares of the New Common Stock on a Fully Diluted Basis to be transferred by Newco if Newco is the Purchaser, to the Liquidating Debtors for distribution pursuant to the Plan to the holders of Class 7 Allowed Unsecured Claims and Class 10 Interests as provided in the Plan if Newco is the Purchaser [inapplicable under sale to Pivotal Global Capacity, LLC].

1.87 **Newco** means the company formed by the Participating Debenture Holders for the purpose of either purchasing the Assets or, alternatively, acquiring the equity in the Reorganized Debtors, in accordance with this Plan. Newco is not being formed by Pivotal Global Capacity, LLC as Purchaser, and will not take effect under the Modified Plan.

1.88 **Non-Transferred Assets** means those Assets (exclusive of Retained Causes of Action) that are not transferred to Purchaser upon closing of the Sale, including, without limitation, (i) pending Purchaser obtaining the requisite telecommunications or other regulatory authorizations from State regulatory agencies and/or consent of State regulatory agencies to the transfer of such Assets or (ii) if an attempted assignment of any contract or lease, without the consent of any other Person party thereto, would constitute a breach thereof or in any way negatively affect the rights of Purchaser (unless the restrictions on assignment would be rendered ineffective pursuant to sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended, or any provision of the Bankruptcy Code), as the assignee of such contract or lease, as the case may be, thereunder.

1.89 **November 2008 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about November 19, 2008 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest.

1.90 **November Debenture Agent** means Midsummer Investment Ltd. (definition no longer applicable) or its successor in interest.

1.91 **November Debenture Distribution** means, for each holder of a November Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series A Preferred Stock Distribution [inapplicable under sale to Pivotal Global Capacity, LLC]; and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder or its successor in interest [inapplicable under sale to Pivotal Global Capacity, LLC].

1.92 **November Debenture Secured Claims** means any Secured Claims arising pursuant to that certain Securities Purchase Agreement dated November 19, 2008 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto or their successors in interest.

1.93 **Participating Debenture Holders** means those certain holders of July Debenture Secured Claims, August Debenture Secured Claims, March Debenture Secured Claims, VPP Debenture Secured Claims and November Debenture Secured Claims which participate as DIP Lenders in the DIP Facility [inapplicable due to acquisition of DIP Facility by Pivotal Global Capacity, LLC].

1.94 **Person** means any individual, corporation, partnership, association, indenture trustee, limited liability company, organization, joint stock company, joint venture, estate, trust,

governmental unit or any political subdivision thereof, Interest holder, or any other Entity or organization.

1.95 **Petition Date** means July 23, 2010.

1.96 **Plan** means this plan of reorganization, either in its present form or as it may be altered, amended, or modified from time to time by the Debtors or the Liquidating Debtors or Reorganized Debtors, as applicable, in accordance with the Bankruptcy Code and Bankruptcy Rules.

1.97 **Plan Administrator** means a Person (if any) designated by the Debtors (or any successor thereto appointed pursuant to the Plan) and acceptable to the Purchaser who shall be vested with authority to exercise all rights of the Liquidating Debtors (and the Plan Administrator) if no Reorganization Election is made under the Plan, which for Pivotal Global Capacity, LLC as Purchaser, is Dan Kardatzke.

1.98 **Plan Administrator Expenses** means all actual and necessary costs and expenses incurred on and after the Effective Date in connection with the Wind Down and the administration of the Plan, including, but not limited to, (a) the costs, expenses and legal fees incurred related to: (i) filing and prosecuting objections to Claims; (ii) distributing the Plan Distributions; (iii) performing the duties set forth in the Plan; and (b) all fees payable pursuant to section 1930 of Title 28 of the United States Code.

1.99 **Plan Consideration** means the distributions under the Plan to any holders of Allowed Claims or Allowed Interests entitled to a distribution under this Plan.

1.100 **Plan Distribution** means the payment or distribution under the Plan of the Plan Consideration.

1.101 **Plan Documents** means the documents, other than this Plan, to be executed, delivered, assumed, and/or performed in connection with the consummation of this Plan.

1.102 **Plan Supplement** means the ~~[list agreements and materials to be filed as a Plan Supplement]~~ Wind Down Budget. The Plan Supplement will be filed with the Clerk of the Bankruptcy Court in accordance with such deadline established in the Disclosure Statement Order or pursuant to the Plan.

1.103 **Plan Support Agreement** means the agreement made and entered into as of July 22, 2010, by and among the Debtors and certain Pre-Petition Debenture Lenders, including the Participating Debenture Holders, providing, among other things, for the support of the Plan by the parties thereto on the terms and conditions set forth therein. [inapplicable under sale to Pivotal Global Capacity, LLC]

1.104 **Preferred Stock** means the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock.

1.105 **Pre-Petition Debenture Agents** means the July Debenture Agent, the August Debenture Agent, the VPP Debenture Agent, the November Debenture Agent, and the March

Debenture Agent (definition no longer applicable), or, in each case, as applicable, its successor in interest.

1.106 ***Pre-Petition Debenture Agreements*** means each of the agreements related to (i) the August 2009 Debentures; (ii) the July 2009 Debentures, (iii) the VPP Debentures; (iv) the November 2008 Debentures; and (v) the March Debentures.

1.107 ***Pre-Petition Debenture Cash Distribution*** means a distribution of the Net Cash Sale Proceeds in the following amounts and order of priority to the extent of such Net Cash Sale Proceeds: inapplicable under sale to Pivotal Global Capacity, LLC

- (a) first, to the holders of July and August Debenture Secured Claims until such holders have received an aggregate distribution of \$6,000,000 pursuant to this clause (a);
- (b); second, to the holders of VPP, March and November Debenture Secured Claims until such holders have received an aggregate distribution of \$13,750,000 pursuant to this clause (b);
- (c) third, to the holders of Pre-Petition Debenture Claims, 30.8% to the holders of July and August Debenture Secured Claims and 69.2% to the holders of VPP, March and November Debenture Secured Claims, until the holders of July and August Debenture Secured Claims have received payment in full of their Allowed July and August Debenture Secured Claims; and
- (d) fourth, to the holders of VPP, March and November Debenture Secured Claims, until they have received payment in full of their Allowed VPP, March and November Debenture Secured Claims.

All amounts distributed to the holders of July and August Debenture Secured Claims in accordance with the foregoing provisions of this Article 1.107 shall be allocated among the holders of July and August Debenture Secured Claims in proportion to the respective aggregate amounts of their Allowed July and August Debenture Secured Claims. All amounts distributed to the holders of VPP, March and November Debenture Secured Claims in accordance with the foregoing provisions of this Article 1.107 shall be allocated among the holders of VPP, March and November Debenture Secured Claims in proportion to the respective aggregate amounts of their Allowed VPP, March and November Debenture Secured Claims.

~~1.108 ***Pre-Petition Debenture Lenders*** means the holders of the August 2009 Debentures, the July 31, 2009 Debentures, the VPP 2009 Debentures, the November 2008 Debentures and the March 2008 Debentures.~~

1.108 ***Pre-Petition Debenture Lenders*** means Pivotal Global Capacity, LLC as assignee and successor holder of all rights, title and interests in, to and under (a) the Pre-Petition Debenture Agreements; (b) the following debentures and Secured Claims (collectively, the “Pre-Petition Debentures”): the August 2009 Debentures, August Debenture Secured Claims, the July

2009 Debentures, July Debenture Secured Claims, the March 2008 Debentures, March Debenture Secured Claims, November 2008 Debentures, November Debenture Secured Claims, the VPP 2009 Debentures, VPP Debenture Secured Claims; (c) any registration rights and agreements related thereto; (d) the Pre-Petition Debenture Claims; (e) the Debenture Collateral; (f) any warrants to purchase Common Stock of the Company issued to the Assignor at the time it purchased any of the Pre-Petition Debentures and any and all interest therein; (g) all orders in the above-captioned cases relating to any of the above (a) through (f); and (h) all documents or instruments relating to any of the above (a) through (f) but excluding (i) any and all rights of the Assignors to indemnification under any of (a) through (h) for any claims asserted or that may hereafter be asserted against any of the Assignors as holders of Pre-Petition Debentures and arising prior to the Effective Date) (all of (a) through (h) but excluding (i) above being referred to herein, collectively, the “Assigned Debentures”).

1.109 ***Pre-Petition Debenture Claims or Prepetition Debenture Obligations*** means all obligations due and owing with respect to the Pre-Petition Debenture Agreements as of the Petition Date, including the July Debenture Secured Claims, August Debenture Secured Claims, VPP Debenture Secured Claims, March Debenture Secured Claims and November Debenture Secured Claims.

1.110 ***Pro Rata Share*** means, with respect to any distribution on account of an Allowed Claim or Allowed Interest, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim or Allowed Interest bears to the aggregate amount of all Allowed Claims or Allowed Interests, as applicable, in such Class.

1.111 ***Priority Claim*** means any Priority Tax Claim or Priority Non-Tax Claim, but only to the extent such Claim is entitled to priority.

1.112 ***Priority Non-Tax Claim*** means any Claim (other than an Administrative Expense Claim, a Fee Claim, a Priority Tax Claim, a Tranche A DIP Facility Claim or a Tranche B DIP Facility Claim) that is entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

1.113 ***Priority Tax Claim*** means any Claim that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

1.114 ***Professional*** means a Person employed in accordance with sections 327 and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code.

~~1.115 ***Professional Fee Claim*** means those fees and expenses claimed by Professionals pursuant to sections 330, 331 or 503 of the Bankruptcy Code, and unpaid as of the Effective Date.~~

1.115 [Deleted as duplicative of “Fee Claim”]

1.116 ***Purchaser*** means either: (i) Newco ***inapplicable under sale to Pivotal Global Capacity, LLC***; or (ii) such other Person that submits the highest or otherwise best bid for substantially all of the Assets in accordance with the Bid Procedures and with whom the Debtors consummate an APA for the sale of the Acquired Assets under section 363 of the Bankruptcy

Code or, alternatively, which acquires the equity in the Reorganized Debtors, [which is Pivotal Global Capacity, LLC](#).

1.117 **Released Parties** means the Debtors, the Creditors' Committee, if any, and its members (solely in their capacity as such), the Participating Debenture Holders, the Pre-Petition Debenture Lenders, the Purchaser, the Pre-Petition Debenture Agents, the Tranche A Lender, the Tranche B Lenders, the Tranche B Agent, the Plan Administrator and the respective current officers, directors, employees, members, agents, affiliates, advisors, attorneys, accountants, and representatives of each of the foregoing.

1.118 **Retained Causes of Action** means any and all claims and causes of action set forth on Exhibit "B" entitled "Retained Causes of Actions", attached hereto and made part hereof.

1.119 **Reorganization Election** means the election by Purchaser to effectuate the Sale in accordance with Article 5.1(b) of the Plan through a corporate restructuring of the Debtors which complies with section 1129 of the Bankruptcy Code (and not as an asset sale pursuant to section 363 of the Bankruptcy Code) pursuant to one or more transactions contemplated by Article 5.1(c) of the Plan.

1.120 **Reorganized Debtors** means the Debtors upon and after the Effective Date, in the event that the Plan is amended to provide for the restructuring and continued operation of the Debtors after the Effective Date as provided in Article V of the Plan.

1.121 **Reorganized Debtors' Parent** means Debtors' Parent from and after the Effective Date, in the event that the Plan is amended to provide for the restructuring and continued operation of the Debtors after the Effective Date as provided in Section Article V of the Plan.

1.122 **Sale** means the sale or transfer of the Acquired Assets under or in connection with the Plan, any APA, or any other order of the Bankruptcy Court or, alternatively, sale of the equity of the Reorganized Debtors to Purchaser.

[1.122a Sale Facility means the increase in the DIP Facility on the Sale Closing Date to provide the Exit Capital Requirements Plan Funding under the Bid Procedures in amounts set forth in the APA.](#)

1.123 **Sale Order** means an order of the Bankruptcy Court authorizing and approving the Sale.

1.124 **Sale Proceeds** means the consideration for the sale or transfer of the Acquired Assets of the Debtors pursuant to the APA. ~~If an entity other than Neweco is the Purchaser of the Assets, the Sale Proceeds shall consist of (i) an amount in Cash not less than the initial overbid as required under the Bid Procedures, plus (ii) the New Common Stock Pool, plus (iii) any other consideration of the winning bid.~~

1.125 **Scheduled** means set forth, stated or listed on the Schedules.

1.126 **Schedules** means the Schedules of Assets and Liabilities and List of Equity Security Holders Filed by the Debtors under the Bankruptcy Rules, as the same have been or may be amended from time to time before the Effective Date.

1.127 **Secured Claim** means any claim that is secured by a valid, perfected and unavoidable lien on property in which the Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the claimholder's interest in the Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, and determined under section 506 of the Bankruptcy Code or as provided in this Plan.

1.128 **Series A Holder** means the holder of a VPP Debenture Secured Claim, March Debenture Secured Claim or November Debenture Secured Claim, currently Pivotal Global Capacity, LLC.

1.129 **Series A Preferred Stock** means participating convertible preferred stock of Newco (~~or~~ but not the Reorganized Debtor Parent or the Purchaser, ~~as-if~~ applicable) that (i) will have an aggregate liquidation preference of \$6,000,000, senior to all other capital stock of the issuer other than Series C Preferred Stock and Series B Preferred Stock, (ii) will be convertible, at the option of the respective holders thereof as to the shares thereof held by each of them, into shares of New Common Stock representing in the aggregate up to 13.5% of the issued and outstanding New Common Stock on a Fully-Diluted Basis, subject to dilution by any exit financing, and (iii) will entitle the holders thereof to voting rights on the basis of one vote for each share of New Common Stock into which the Series A Preferred Stock is convertible. [inapplicable under sale to Pivotal Global Capacity, LLC]

1.130 **Series A Preferred Stock Distribution** means a distribution in the event Newco is the Purchaser based upon the following formula: $N = T \times (\text{PrefAClaim} / \text{TotPrefAClaims})$, where **N** = the number of shares of Series A Preferred Stock to be issued to the Series A Holder, **T** = the total number of shares of Series A Preferred Stock to be issued, **PrefAClaim** = Claim x [10% + 90% (Sub/ProRata)], **TotPrefAClaims** = the sum of all the PrefAClaim amounts for all of the Series A Holders, **Sub** = the amount of the Series A Holder's subscription to the Tranche B Loan, **ProRata** = the entire amount of the Tranche B Loan multiplied by (the aggregate amount of the Series A Holder's allowed VPP, March, November, July and August Debenture Secured Claims divided by the total amount of all allowed VPP, March, November, July and August Debenture Secured Claims), and **Claim** = the aggregate amount of the Series A Holder's allowed VPP, March and November Debenture Secured Claims. [inapplicable under sale to Pivotal Global Capacity, LLC]

1.131 **Series B Holder** means a holder of a July Debenture Secured Claim or an August Debenture Secured Claim, currently Pivotal Global Capacity, LLC.

1.132 **Series B Preferred Stock** means participating convertible preferred stock of Newco (or the Reorganized Debtor Parent, as applicable) that (i) will have an aggregate liquidation preference of \$6,000,000, senior to all other capital stock of the issuer other than Series C Preferred Stock, (ii) will be convertible, at the option of the respective holders thereof as to the shares thereof held by each of them, into shares of New Common Stock representing in the aggregate up to 13.5% of the issued and outstanding New Common Stock on a Fully-Diluted

Basis, subject to dilution by any exit financing, and (iii) will entitle the holders thereof to voting rights on the basis of one vote for each share of New Common Stock into which the Series B Preferred Stock is convertible. [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#)

1.133 *Series B Preferred Stock Distribution* means a distribution based upon the following formula: $N = T \times (\text{PrefBClaim} / \text{TotPrefBClaims})$, where **N** = the number of shares of Series B Preferred Stock to be issued to the Series B Holder, **T** = the total number of shares of Series B Preferred Stock to be issued, **PrefBClaim** = Claim x [80% + 20% (Sub/ProRata)], **TotPrefBClaims** = the sum of all the PrefBClaim amounts for all of the Series B Holders, **Sub** = the amount of the Series B Holder's subscription to the Tranche B Loan, **ProRata** = the entire amount of the Tranche B Loan multiplied by (the aggregate amount of the Series B Holder's allowed VPP, March, November, July and August Debenture Secured Claims divided by the total amount of all allowed VPP, March, November, July and August Debenture Secured Claims), and **Claim** = the aggregate amount of the Series B Holder's allowed July and August Debenture Secured Claims. [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#)

1.134 *Series C Preferred Stock* means participating convertible preferred stock of Newco (or the Reorganized Debtor Parent, as applicable) that (i) will have liquidation preferences, senior to all other capital stock of the issuer, equal in the aggregate to the total amount of the Tranche B DIP Obligations (including all outstanding principal of and accrued and unpaid interest on the Tranche B Loan), (ii) will be convertible, at the option of the respective holders thereof as to the shares thereof held by each of them, into shares of New Common Stock representing in the aggregate up to 63% of the issued and outstanding New Common Stock on a Fully-Diluted Basis, subject to dilution by any exit financing, and (iii) will entitle the holders thereof to voting rights on the basis of one vote for each share of New Common Stock into which the Series C Preferred Stock is convertible. [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#)

1.135 *Stalking Horse Agreement* means one or more asset purchase agreements (as may be amended, modified, restated or supplemented from time to time) by and among the Debtors, as sellers, and the Stalking Horse Bidder, as buyer, which provides, among other things, for the sale or transfer of the Acquired Assets. [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#)

1.136 *Stalking Horse Bidder* means Newco or as otherwise defined in the Bid Procedures. [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#)

1.137 *Subsidiary Debtors' Interests* means "equity security" (as defined in Section 101(16) of the Bankruptcy Code) interests in any Debtor, other than Debtors' Parent.

1.138 *Tranche A DIP Facility Claims* means all obligations arising out of or in connection with the Tranche A Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order), [now held by Pivotal Global Capacity, LLC.](#)

1.139 *Tranche A DIP Lender* means Downtown CP-CGSY, LLC [or its successor in interest, now Pivotal Global Capacity, LLC.](#)

1.140 **Tranche A Loan** means that portion of the DIP Facility funded by the Tranche A DIP Lender.

1.141 **Tranche B Agent** means Black River Global Equity Fund Ltd. or its duly appointed successor, [inapplicable upon the transfer of Tranche B DIP Facility Claims to Pivotal Global Capacity, LLC](#).

1.142 **Tranche B DIP Facility Claims** means all Claims arising out of or in connection with the Tranche B Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order).

1.143 **Tranche B DIP Lenders** means the Participating Debenture Holders [or any successors in interest, now Pivotal Global Capacity, LLC](#), and any investor that is not a current holder of any of the Debtors' debentures and is approved by the Participating Debenture Holders, that signed the DIP Facility as a Tranche B Lender, *provided, however*, that, prior to the Confirmation Date, any Pre-Petition Debenture Lender that is not already a Tranche B Lender shall be entitled to participate in the DIP Facility as a Tranche B Lender up to a Pro Rata Share of the Tranche B Loan that is in the same proportion thereof as such Pre-Petition Debenture Lender's Pro Rata share of the Pre-Petition Debenture Obligations.

1.144 **Tranche B Loan** means that portion of the DIP Facility funded by the Tranche B DIP Lenders.

1.145 **Tranche B DIP Obligations** means \$7,250,000 plus accrued interest and other charges in accordance with the DIP Facility.

1.146 **Unreleased Avoidance Actions** means any and all actual or potential claims to avoid or recover a transfer of property or avoid any obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 547, 548, 549, 550, 551 and 553(b) of the Bankruptcy Code, including those which may be asserted derivatively, that are not released or transferred in the APA, the Plan, the Confirmation Order and/or any other order of the Bankruptcy Court approving the release of Avoidance Actions.

1.147 **Unsecured Claim** means any Claim that is not an Administrative Expense Claim, Priority Claim, Priority Non-Tax Claim, DIP Claim, or Pre-Petition Secured Debenture Claim, or a Claim otherwise specifically classified in another class in this Plan.

1.148 **U.S. Trustee** means the United States Trustee for the District of Delaware.

1.149 **U.S. Trustee Fees** means fees due to the U.S. Trustee by the Debtors or Liquidating Debtors arising under 28 U.S.C. § 1930(a)(6) or otherwise, and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

1.150 **Utility Motion** means the Motion for Interim and Final Orders: (A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors on Account of Prepetition Amounts Due; (B) Determining that the Utilities are Adequately Assured of Future Payment; (C) Establishing Procedures for Determining Requests

for Additional Assurance; and (D) Permitting Utility Companies to Opt Out of the Procedures Established Herein [P-5].

1.151 **VPP 2009 Debentures** means, collectively, all of the agreements referenced in Section (D) of the Interim DIP Financing Order and all other transaction documents related to the variable rate secured convertible debentures of Capital Growth Systems, Inc. issued in connection with that certain Securities Purchase Agreement dated on or about July 31, 2009 among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto.

1.152 **VPP Debenture Agent** means Aequitas Capital Management, Inc. (definition no longer applicable) or its successor in interest, now Pivotal Global Capacity, LLC.

1.153 **VPP Debenture Distribution** means, for each holder of a VPP Debenture Secured Claim, (i) in the event that Newco is the Purchaser, the Series A Preferred Stock Distribution; inapplicable under sale to Pivotal Global Capacity, LLC and (ii) in the event Newco is not the Purchaser, the portion of the Pre-Petition Debenture Cash Distribution distributable to such holder or its successor in interest. inapplicable under sale to Pivotal Global Capacity, LLC

1.154 **VPP Debenture Secured Claims** means any Secured Claims arising pursuant to that certain Securities Purchase Agreement dated on or about July 31, 2009, among Global Capacity Group, Inc. and the Pre-Petition Debenture Lenders party thereto.

1.155 **Wind Down** means the wind down and liquidation of the Debtors and, after the Effective Date, the Liquidating Debtors, in accordance with the Plan if no Reorganization Election is made.

1.156 **Wind Down Budget** means the Liquidating Debtors' budget ~~acceptable to described in the Purchaser and the Debtors~~ APA showing all projected Wind Down Costs covering the period ending on the projected date of completion of the Wind Down of the Debtors. The Wind Down Budget shall be included in the Plan Supplement.

1.157 **Wind Down Costs** means, ~~in accordance with~~ as set forth in the Wind Down Budget, Plan Administrator Expenses, and the fees and expenses incurred by the Liquidating Debtors (including reasonable fees and costs of attorneys and other professionals) for the purpose of: (i) resolving Disputed Claims, if any, and effectuating distributions to holders of Allowed Claims and Allowed Interests; (ii) otherwise implementing the Plan, the Wind Down and the closing of the Bankruptcy Cases; (iii) undertaking such other matters relating to implementation of the Plan as are deemed necessary and appropriate by the Liquidating Debtors; and (iv) operating the Liquidating Debtors in accordance with the Management Agreement.

B. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan. The words “in this Plan”, “this Plan”, “herein”, “hereof”, “hereto”, “hereunder”, and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. The word “including” means “including but not limited to”. The use of the word “any” shall mean “any and all”, and

the use of the word “all” shall also mean “any and all”. The words “shall” and “will” are used interchangeably and have the same meaning.

Whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender will include the masculine, the feminine and the neuter. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Except for the rules of construction contained in sections 102(5) of the Bankruptcy Code, which shall not apply, the rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. Any reference in this Plan to a contract, instrument, release, indenture, or other agreement or documents being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. Subject to the provisions of any contract, certificates or articles of incorporation, by-laws, instruments, releases, or other agreements or documents entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules. The captions and headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any reference to a Person as a holder of a Claim or Interest includes that Person’s successors and assigns.

C. Plan Documents.

All Plan Documents are incorporated into the Plan by reference and are a part of the Plan as if set forth in full herein. Confirmation of the Plan shall constitute approval of the Plan Documents by the Bankruptcy Court as of the Effective Date.

ARTICLE II

ADMINISTRATIVE EXPENSE CLAIMS, DIP CLAIMS, FEE CLAIMS, U.S. TRUSTEE FEES AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, DIP Claims, Fee Claims, U.S. Trustee Fees and Priority Claims of the Debtors have not been classified, and the holders thereof are not entitled to vote on this Plan in their capacity as holders of those Claims.

2.1. Administrative Expense Claims.

(a) Time for Filing Administrative Expense Claims.

The holder of an Administrative Expense Claim (including, for the avoidance of doubt, any claim for substantial contribution under section 503(b)(3) or (4) of the Bankruptcy Code), other than the holder of:

- (i) a Fee Claim;
- (ii) an Administrative Expense Claim that has been Allowed on or before the Effective Date;
- (iii) an Administrative Expense Claim on account of fees and expenses on or after the Petition Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court; and
- (iv) an Administrative Expense Claim arising, in the ordinary course of business, out of the employment by one or more Debtors of an individual from and after the Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses.

must file with the Bankruptcy Court and serve on the Debtors, a request for payment of such Administrative Expense Claim (1) on or before the Confirmation Objection Deadline for any such Administrative Expense Claims claimed for the period from the Petition Date through the Confirmation Objection Deadline, and (2) within thirty (30) days after the Effective Date for any such Administrative Expense Claims claimed for the period from the Confirmation Objection Deadline through the Effective Date. Such request of Administrative Expense Claim must include at a minimum: (i) the name of the applicable Debtor that is purported to be liable for the Administrative Expense Claim and if the Administrative Expense Claim is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the holder of the Administrative Expense Claim; (iii) the amount of the Administrative Expense Claim; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim.

FAILURE TO FILE AND SERVE SUCH REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE EXPENSE CLAIM BEING FOREVER BARRED AND DISCHARGED.

(b) *Treatment of Administrative Expense Claims.*

Each Allowed Administrative Expense Claim shall be paid (i) in full, in Cash, by the Liquidating Debtors or Reorganized Debtors, as applicable on the later of (x) the Effective Date or (y) the date such Claim becomes Allowed, or due and payable in the ordinary course of business, or (ii) on such other terms and conditions as may be agreed to between the holder of such Administrative Expense Claim, the Liquidating Debtors or Reorganized Debtors, as applicable, and the Purchaser.

2.2. *DIP Claims.*

(a) *Tranche A DIP Facility Claim.*

The holder of the Tranche A DIP Facility Claim shall be paid by the Liquidating Debtors or Reorganized Debtors, as applicable, in full in Cash on the Effective Date of the Plan, or as soon thereafter as is reasonably practicable, for all obligations arising out of or in

connection with the Tranche A Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order) unless otherwise agreed to in writing by the holder of the Tranche A DIP Facility Claim, which Purchaser is satisfying through a Credit Bid of the Tranche A DIP Facility Claim.

(b) *Tranche B DIP Facility Claims.*

In the event that Newco is the Purchaser, each holder of a Tranche B DIP Facility Claim shall receive, in full and final satisfaction of such Allowed Tranche B DIP Facility Claim, its Pro Rata Share (based on its interest in the Tranche B Loan) of Series C Preferred Stock [inapplicable under sale to Pivotal Global Capacity, LLC]. In the event Newco is not the Purchaser, each holder of a Tranche B DIP Facility Claim shall be paid by the Liquidating Debtors or Reorganized Debtors, as applicable, in full in cash on the Effective Date of the Plan (unless paid earlier pursuant to a Final Order approving the relief requested in the Bid Procedures Motion), or as soon thereafter as is reasonably practicable, all obligations arising out of or in connection with the Tranche B Loan (whether set forth in the DIP Facility, the Interim DIP Financing Order or the Final DIP Financing Order), and which Purchaser is satisfying through a Credit Bid of the Tranche B DIP Facility Claims.

All distributions to be made to the holders of Tranche B DIP Facility Claims pursuant to this Article 2.2(b) shall be made to Pivotal Global Capacity, at the option LLC, as successor holder of the Tranche B ~~Agent, to or in accordance with the instructions from the Tranche B Agent for the benefit of such holders~~ DIP Facility.

2.3. *Fee Claims.*

(a) *Time for Filing Fee Claims.*

Any Professional seeking allowance by the Bankruptcy Court of a Fee Claim shall file its respective final application for allowance of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date no later than forty-five (45) days after the Effective Date. **FAILURE TO FILE SUCH FEE APPLICATION TIMELY SHALL RESULT IN THE FEE CLAIM BEING FOREVER BARRED AND DISCHARGED.**

Objections to such Fee Claims, if any, must be filed and served no later than sixty-five (65) days after the Effective Date or such other date as established by the Bankruptcy Court. The Liquidating Debtors or Reorganized Debtors, as applicable may seek an extension of this deadline for objecting to Fee Claims on ex parte motion.

(b) *Treatment of Fee Claims.*

All Professionals seeking allowance by the Bankruptcy Court of a Fee Claim shall be paid by the Liquidating Debtors or Reorganized Debtors, as applicable, in full in cash in such amounts as are approved by the Bankruptcy Court: (i) upon the later of (x) the Effective Date, and (y) ten (10) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or as soon thereafter as is reasonably practicable, or (ii) upon such other terms as may be mutually agreed upon between the holder of such Fee Claim and the

Liquidating Debtors or Reorganized Debtors, as applicable. On the Effective Date, or as soon thereafter as is reasonably practicable, Purchaser shall pay to the Liquidating Debtors or Reorganized Debtors, as applicable, the Fee Payment Cap, which shall ~~reserve and hold be held~~ in a segregated account ~~or shall place in escrow Cash in an amount equal to the accrued but unpaid estimated Fee Claims as of the Effective Date~~, which Cash shall be disbursed solely to the holders of Allowed Fee Claims and U.S. Trustee Fees and to meet Wind Down Budget expenditures with the remainder to be reserved until all Allowed Fee Claims in agreed amounts have been paid in full or all remaining Fee Claims have been Disallowed by Final Order, at which time any remaining Cash in the segregated account shall become the sole and exclusive property of the Liquidating Debtors or Reorganized Debtors, as applicable, to be distributed in accordance with the terms of this Plan, provided, however, that any advances under the Sale Facility prior to the Effective Date (and prior to Sale Closing) of amounts within the Fee Payment Cap reduce, dollar for dollar, the amounts available in the Fee Payment Cap, the Sale Facility, and such specified portion of the Sale Facility.

2.4. *U.S. Trustee Fees.*

The Liquidating Debtors shall pay all U.S. Trustee Fees on an ongoing basis on the date such U.S. Trustee Fees become due, until such time as a final decree is entered closing the applicable Bankruptcy Case or the applicable Bankruptcy Case is converted or dismissed, or the Bankruptcy Court orders otherwise.

2.5. *Priority Non-Tax Claims.*

Each Allowed Priority Non-Tax Claim shall be paid the Allowed amount of its Priority Non-Tax Claim (a) in full, in Cash, by the Liquidating Debtors or Reorganized Debtors, as applicable on the Effective Date, or as soon thereafter as is reasonably practicable, or (b) upon such other terms as may be mutually agreed upon between such holder of an Allowed Priority Non-Tax Claim, the Liquidating Debtors or Reorganized Debtors, as applicable and the Purchaser.

2.6. *Priority Tax Claims*

Each Allowed Priority Tax Claim shall be paid the Allowed amount of its Priority Tax Claim (a) in full, in Cash, by the Liquidating Debtors on the Effective Date, or as soon thereafter as is reasonably practicable, (b) over a period ending not later than five (5) years after the Petition Date, or (c) upon such other terms as may be mutually agreed upon between such holder of an Allowed Priority Tax Claim, the Liquidating Debtors and the Purchaser.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1. *Classification of Claims and Interests.*

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation and distribution under this Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. However, a Claim or Interest is placed in a particular Class for the purpose

of receiving distributions pursuant to this Plan only to the extent that such Claim or Interest is or becomes an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

The following designates the Classes of Claims against and Interests in the Debtors and the treatment thereof under the Plan, and specifies which Classes are: (i) impaired or unimpaired by this Plan; (ii) entitled to vote to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code; and (iii) deemed to accept or reject this Plan.

A *Classified Claims.*

1. *Class 1 July Debenture Secured Claims.*

(a) Treatment: Class 1 consists of the Secured Claims of the holders of Allowed July Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed July Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed July Debenture Secured Claim, its respective July Debenture Distribution. [\[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims\]](#)

(ii) For all purposes under this Plan, each holder of a July Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed July Debenture Secured Claim; ~~and (b) if Newco is not the Purchaser [inapplicable under sale to Pivotal Global Capacity, the difference between the Cash such holder receives under this Plan pursuant to subsection (i), above, LLC]; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder under this Plan~~ [\[inapplicable under sale to Pivotal Global Capacity, the difference between the Credit Bid of such holder under this Plan](#) and the Allowed Amount of the July Debenture Secured Claim.

All distributions to be made to the holders of July Debenture Secured Claims pursuant to this Plan shall be made to the [Pivotal Global Capacity LLC as successor to the](#) July Debenture Agent for the benefit of such holders.

(b) Voting: The July Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 1 of the Plan. Each holder of a July Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

2. *Class 2 August Debenture Secured Claims.*

(a) Treatment: Class 2 consists of the Secured Claims of the holders of the Allowed August Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed August Debenture Secured Claim shall receive, in full

and final satisfaction of such Allowed August Debenture Secured Claim, its respective August Debenture Distribution. [inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]

(ii) For all purposes under this Plan, each holder of an August Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed August Debenture Secured Claim; ~~and (b) if Newco is not the Purchaser~~ [inapplicable under sale to Pivotal Global Capacity, the difference between the Cash such holder receives under this Plan pursuant to subsection (i), above, LLC]; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder and the Allowed Amount of the August Debenture Secured Claim.

All distributions to be made to the holders of August Debenture Secured Claims pursuant to this Plan will be made to Pivotal Global Capacity LLC as successor to the August Debenture Agent for the benefit of such holders.

(b) Voting: The August Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 2 of the Plan. Each holder of an August Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

3. *Class 3 VPP Debenture Secured Claims.*

(a) Treatment: Class 3 consists of the Secured Claims of the holders of the Allowed VPP Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed VPP Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed VPP Debenture Secured Claim, its respective VPP Debenture Distribution. [inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims]

(ii) For all purposes under this Plan, each holder of a VPP Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed VPP Debenture Secured Claim; ~~and (b) if Newco is not the Purchaser, the difference between the Cash such holder receives under this Plan pursuant to subsection (i), above,~~ [inapplicable under sale to Pivotal Global Capacity, LLC]; and (b) if Newco is not the Purchaser, the difference between the Credit Bid of such holder and the Allowed Amount of the VPP Debenture Secured Claim.

All distributions to be made to the holders of VPP Debenture Secured Claims pursuant to this Plan shall be made to Pivotal Global Capacity LLC as successor to the VPP Debenture Agent for the benefit of such holders.

(b) Voting: The VPP Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 3 of the Plan. Each holder of a VPP Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

4. *Class 4 March Debenture Secured Claims.*

(a) Treatment: Class 4 consists of the Secured Claims of the holders of Allowed March Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed March Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed March Debenture Secured Claim, its respective March Debenture Distribution. [\[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims\]](#)

(ii) For all purposes under this Plan, each holder of a March Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed March Debenture Secured Claim; ~~and (b) if Newco is not the Purchaser, the difference between the Cash such holder receives under this Plan pursuant to subsection (i), above,~~ [\[inapplicable under sale to Pivotal Global Capacity, LLC\]; and \(b\) if Newco is not the Purchaser, the difference between the Credit Bid of such holder and the Allowed Amount of the March Debenture Secured Claim.](#)

All distributions to be made to the holders of March Debenture Secured Claims pursuant to this Plan shall be made to [Pivotal Global Capacity LLC as successor to](#) the March Debenture Agent for the benefit of such holders.

(b) Voting: The March Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 4 of the Plan. Each holder of a March Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

5. *Class 5 November Debenture Secured Claims.*

(a) Treatment: Class 5 consists of the Secured Claims of the holders of Allowed November Debenture Secured Claims.

(i) On the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed November Debenture Secured Claim shall receive, in full and final satisfaction of such Allowed November Debenture Secured Claim, its respective November Debenture Distribution. [\[inapplicable under sale to Pivotal Global Capacity, LLC; APA provides for credit bid of Debenture Secured Claims\]](#)

(ii) For all purposes under this Plan, each holder of a November Debenture Secured Claim shall have an Allowed Deficiency Claim in Class 7 in accordance with

section 506(a) of the Bankruptcy Code equal to (a) in the event that Newco is the Purchaser of the Assets, the difference between such holder's Pro Rata amount of the Credit Bid and the Allowed amount of the holder's Allowed November Debenture Secured Claim inapplicable under sale to Pivotal Global Capacity, LLC; and (b) if Newco is not the Purchaser, the difference between the ~~Cash Credit Bid of such holder receives under this Plan pursuant to subsection (i), above,~~ and the Allowed Amount of the November Debenture Secured Claim.

All distributions to be made to the holders of November Debenture Secured Claims pursuant to this Plan shall be made to Pivotal Global Capacity LLC as successor to the November Debenture Agent for the benefit of such holders.

(b) Voting: The November Debenture Secured Claims are impaired claims. The holders of such claims are entitled to vote to accept or reject the Plan in Class 5 of the Plan. Each holder of a November Debenture Secured Claim shall be entitled to vote its Allowed Deficiency Claim in Class 7 of the Plan.

6. *Class 6 Mission Critical Vendor Claims.*

(a) Treatment: Each Mission Critical Vendor Claim will be assumed by and will be entitled to payment by Purchaser (or, in the event of a Restructuring Election, by the Reorganized Debtors) in cash in full in accordance with the terms ~~of the APA, net of any deposits or other payments made proposed~~ by the Debtors ~~during the pendency of the Chapter 11 Cases~~ in their October 31, 2010, Notice of Debtors' Designation of Successful Bidder in Conjunction with Reorganization Plan, Rescheduled Sale Hearing, and Assumption and Assignment of Contracts, Executory Contracts and Unexpired Leases and Objection Deadline [DE 369] except with respect to the Mission Critical Vendors that objected to such treatment: Verizon Communications, Inc. [DE 416], AboveNet Communications, Inc. [DE 375, 402], Oracle America, Inc. [DE 415], Level 3 Communications, LLC and its affiliates [DE 270], Qwest Communications Company LLC and Qwest Corporation [DE 273] and AT&T Corp. [DE 387], whose Mission Critical Vendor Claims will be satisfied by treatment to which each has agreed and will be set forth in the Confirmation Order.

(b) Voting: Class 6 Claims are unimpaired since each has consented to the treatment proposed, and accordingly is receiving the treatment to which it is entitled. The holders of Mission Critical Vendor Claims are deemed to accept the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

7. *Class 7 Unsecured Claims.*

(a) Treatment:

(i) In the event that Newco is the Purchaser, on the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed Unsecured Claim (including the holders of any Deficiency Claims) shall be entitled to a Pro Rata Share of the New Common Stock Pool. This provision is moot since Newco is not participating in distributions under the Plan; accordingly, holders of Unsecured Claims will receive no distributions under the Plan.

(ii) In the event that Newco is not the Purchaser, (i) each holder of an Allowed Unsecured Claim (including the holders of any Deficiency Claim) shall receive its Pro Rata Share of any Cash portion of the Sale Proceeds remaining after payment in full of all Allowed Secured Claims in Classes 1, 2, 3, 4, and 5, on the Effective Date or as soon thereafter as is reasonably practicable, [This provision is moot since the Sale Proceeds will be insufficient to pay all Allowed Secured Claims in Classes 1-5] and (ii) the Debtors and Newco will engage in discussions about an alternative distribution to Class 7 and Class 10 in lieu of the New Common Stock Pool. This provision is moot since Newco is not participating in distributions under the Plan

(iii) To the extent permitted by law, in the event that Newco is the Purchaser, on the Effective Date the holders of Deficiency Claims in Classes 1, 2, 3, 4 and 5 shall assign their right to receive distributions of New Common Stock from the New Common Stock Pool on account of their Deficiency Claims to (i) the holders of Class 7 Unsecured Claims that are not Deficiency Claim holders and (ii) the holders of Class 10 Interests, at the direction of the Debtors. This provision is moot since Newco is not participating in distributions under the Plan.

All distributions to be made to the holders of Pre-Petition Debenture Claims pursuant to this Article 3.1(A)(7)(a) will be made to the applicable Pre-Petition Debenture Agent for the benefit of such holders. This provision is moot since there are no longer Pre-Petition Debenture Agents

(b) Voting: Unsecured Claims are impaired claims. The holders of Allowed Class 7 Unsecured Claims are impaired. The holders of Allowed Class 7 Unsecured Claims, including the holders of Deficiency Claims, ~~are~~ were entitled to vote to accept or reject the Plan in Class 7 of the Plan. Alternatively, they are deemed to reject the Plan.

8. *Class 8 Intercompany Claims.*

(a) Treatment: Each Intercompany Claim will be disallowed, cancelled, extinguished or reinstated at the option of Purchaser, which shall be specified by notice filed with the Court before the Effective Date.

(b) Voting: Class 8 Claims are impaired. The holders of Intercompany Claims are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

B *Interests.*

1. *Class 9 Subsidiary Debtors' Interests.*

(a) Treatment: To the extent not otherwise transferred under the APA, on the Effective Date, the Subsidiary Debtors' Interests shall be disallowed, cancelled, extinguished or reinstated at the option of Purchaser, subject to Article 5.2(c) of this Plan. For the avoidance of doubt, the Debtors' equity interest in Magenta NetLogic Limited (U.K.) ~~shall~~ may not be cancelled and ~~is being may be~~ acquired by the Purchaser pursuant to the APA.

Purchaser's election with respect to cancellation or transfer of Debtors' equity interest in Magenta shall be specified by notice filed with the Court before the Effective Date.

(b) Voting: Class 9 Interests are impaired. The holders of Subsidiary Debtors' Interests are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

2. *Class 10 Debtors' Parent Interests.*

~~(a) Treatment: The Debtors' Parent Interests shall be cancelled as of the Effective Date.~~

(a) Treatment: The Debtors' Parent Interests may be cancelled as of the Effective Date. If the Reorganization Election is made, however, with the Sale implemented by Pivotal Global Capacity, LLC by direct purchase of the Interests of Capital Growth Systems, Inc. and/or one or more of its subsidiaries or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of Capital Growth Systems, Inc. or one or more of its subsidiaries into any form of entity under the laws of any state, or otherwise in accordance with the Reorganization Election option in the Plan. The Debtors' Parent Interests may alternatively be extinguished and new shares issued to the Purchaser as a method of implementing a Reorganization Election.

(i) To the extent permitted by law, in the event that Newco is the Purchaser, on the Effective Date, the holders of Allowed Debtors' Parent Interests shall receive a Pro Rata Share of the distributions from the New Common Stock Pool which would otherwise be attributable to the holders of Deficiency Claims under this Plan but which have been assigned by the holders of Deficiency Claims in Classes 1, 2, 3, 4 and 5 to the holders of Allowed Debtors' Parent Interests [inapplicable under sale to Pivotal Global Capacity, LLC]. The distribution will only be effectuated in a manner agreed by Newco and the Debtors that will not require registration under any applicable law, including, without limitation, the Securities Act of 1933, the Securities Exchange Act of 1934, or any state securities laws. This provision is moot since Newco is not participating in distributions under the Plan.

(ii) In the event that Newco is not the Purchaser, (i) each holder of an Allowed Debtors' Parent Interest shall receive its Pro Rata Share of any Cash portion of the Sale Proceeds remaining after payment in full of all Allowed Secured Claims in Classes 1, 2, 3, 4, and 5 and all Allowed Unsecured Claims (including Deficiency Claims) in Class 7, on the Effective Date, or as soon thereafter as is reasonably practicable, and (ii) the Debtors and Newco will engage in discussions about an alternative distribution to Class 7 and Class 10 in lieu of the New Common Stock Pool. [inapplicable under sale to Pivotal Global Capacity, LLC; all holders of Allowed Debtors' Parent Interests receive nothing under the Plan, and all of their rights, claims and interests in the Debtors' Parent Interests are extinguished and discharged in full, whether or not a Reorganization Election is made]

(b) Voting: Class 10 Interests are impaired. The holders of Debtors' Parent Interests are deemed to reject the Plan and, accordingly, are not entitled to vote to accept or reject the Plan.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS OR INTERESTS

4.1. *Class Acceptance Requirement.*

(a) A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount of the Allowed Claims in such Class and more than one-half (1/2) in number of holders of such Claims that have voted on the Plan.

(b) A Class of Interests shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have voted on the Plan.

4.2. *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or "Cramdown."*

If any Classes vote to reject this Plan, the Debtors intend to request confirmation of this Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, or supplement this Plan or any Plan Document, as to any and all Debtors, in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

4.3. *Elimination of Vacant Classes.*

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

ARTICLE V

MEANS FOR IMPLEMENTATION

5.1. *Sale of Assets/Reorganization of Debtors*

(a) *Assumption/Assignment.* To the extent not previously transferred under a prior Sale Order, the Debtors shall be authorized on the Effective Date to, among other things, sell, assume, assign and/or transfer the Acquired Assets pursuant to sections 105(a), 363, 365, 1123(b)(4), 1129 and 1146(a) of the Bankruptcy Code under the terms and conditions of this Plan to the Purchaser, and such sale or transfer shall be free and clear of any and all Liens,

Interests, Claims, charges and encumbrances. Except as otherwise expressly provided in this Plan, the Debtors are authorized to take any and all actions necessary to consummate the Sale. The actions necessary to effect the Sale may include: (i) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the Debtors and the Purchaser may agree, and (ii) all other actions that the Debtors and the Purchaser determine to be necessary or appropriate in connection with such transactions, including making such filings or recordings that may be required by or appropriate under applicable state law.

(b) *Plan Structure.* The proposed Sale will result in either (i) the transfer of the Acquired Assets to Purchaser pursuant to a sale under section 363 of the Bankruptcy Code; or, (ii) if a Reorganization Election is made, the issuance by the Debtors to Purchaser of 100% of the ~~equity interest~~ Interests of the Reorganized Debtors in consideration of the Sale Proceeds. Either scenario will provide for substantially similar treatment to holders of Claims and Interests as outlined above, unless otherwise agreed to or as determined by the Bankruptcy Court. The Debtors and Purchaser will work together to structure the proposed Sale in the form ultimately determined by Purchaser.

(c) *Restructuring Options.* If and as directed by the Purchaser and consistent with the Plan, to implement the Plan, the Purchaser and the applicable Debtors or Reorganized Debtors, as the case may be, may enter into such transactions and may take such actions as may be necessary or appropriate to effect a corporate restructuring of their respective businesses, to otherwise simplify the overall corporate structure of the Debtors or Reorganized Debtors, as the case may be, or to reincorporate certain of the Debtors under the laws of jurisdictions other than the laws under which the applicable Debtors are presently incorporated. Such restructuring may include a debt-for-equity exchange, one or more mergers, consolidations, restructurings, dispositions, liquidations, dissolutions or reincorporations, as may be determined by the Purchaser to be necessary or appropriate. The actions to effect such restructuring may include, at the Purchaser's option (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable entities may agree, (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree, (iii) the filing of appropriate certificates or articles of merger, consolidation or dissolution pursuant to applicable state law and (iv) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. The acquisition of the Purchased Assets may also be accomplished indirectly, and the form of the acquisition may be an acquisition of the Interests of Debtor Capital Growth Systems, Inc. or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such Interests) by direct purchase of such Interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state.

(d) *Preservation of Tax Attributes.* In the event of a restructuring, as set forth above in Article 5.1(c), Purchaser shall have the right, in accordance with applicable non-bankruptcy law, to structure the Sale in a tax efficient manner, so as to preserve and maximize (to the extent feasible) the Debtors' historical tax attributes or, in lieu thereof, to achieve a step-up in basis of the Acquired Assets. As directed by and in consultation with Purchaser, the Debtors shall take any and all actions reasonably necessary to achieve the foregoing.

5.2. *Vesting of Assets*

(a) Assets of the Debtors. To the extent not previously transferred under a prior Sale Order or an APA, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, and except as otherwise provided in this Plan or in the Confirmation Order, all Acquired Assets of the Debtors' Estates, including all claims, rights and Retained Causes of Action other than the Debtors' Retained Causes of Action, shall vest in the Purchaser free and clear of all Claims, Liens, charges, other encumbrances and ~~Interests~~interests. On the Effective Date, the Debtors' Retained Causes of Action shall vest in the Liquidating Debtors or Reorganized Debtors, as applicable.

(b) Avoidance Actions. Any Unreleased Avoidance Actions shall vest in the Purchaser on the Effective Date to the extent provided in the APA and, to the extent not so provided in the APA, in the Liquidating Debtors or Reorganized Debtors, as applicable.³ Upon and after the Effective Date, the Purchaser, or the Liquidating Debtors or Reorganized Debtors, as applicable, shall have the authority to analyze, continue, commence, prosecute, settle and realize upon the Unreleased Avoidance Actions in its discretion without any requirement of notice or Bankruptcy Court approval, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or the Confirmation Order. To the extent necessary, following the Effective Date, the Purchaser, or the Liquidating Debtors or Reorganized Debtors, as applicable, shall be deemed to be a judicial substitute for the Debtors as the party-in-interest with respect to such Unreleased Avoidance Actions and the representative of the Estates with respect to such Unreleased Avoidance Actions pursuant to section 1123(b)(3)(B).

(c) ~~Subsidiary Debtors'~~Interests. In the event of a Reorganization Election, the ~~Subsidiary Debtors'~~Interests in any Reorganized Debtor may vest fully in such Reorganized Debtor or Debtors corresponding to the Debtor or Debtors that held such Debtor's ownership Interests prior to the Effective Date, in each case, free and clear of all rights, Liens, Claims, encumbrances and other liabilities, including of Pre-Petition holders of such Interests, without express or implied limitation, ~~Claims against or Interests~~ in such Debtors.

5.3. *Exit Capital Requirements Plan Funding.*

Except as otherwise provided in the Plan or the APA, including the aggregate limitation in the Fee Payment Cap in the APA, the Exit Capital Requirements Funding shall be used by the Liquidating Debtors: (i) to pay in full Allowed Administrative Expense Claims,

³—The Debtors are generally only retaining Avoidance Actions against persons, firms or entities that are not customers, business partners, or ongoing relationships of the Debtors' business, including, but not limited to, those who are Mission Critical Vendors.

Tranche A DIP Facility Claims, Tranche B DIP Facility Claims (to the extent applicable), Allowed Fee Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims, and (ii) to provide a sufficient reserve for the payment of Wind Down Costs. For the avoidance of doubt and notwithstanding anything to the contrary herein, unless a Reorganization Election is made, Newco shall only be required to fund the Exit Capital Funding amount and other Assumed Liabilities set forth in Schedule 2 of the Plan Support Agreement and Wind Down Costs set forth in the Wind Down Budget [sentence inapplicable under sale to Pivotal Global Capacity, LLC].

5.4. *Continued Corporate Existence and Authority to Implement.*

(a) From and after the Effective Date, if no Reorganization Election is made, each of the Liquidating Debtors shall be managed and administered by the Plan Administrator, who shall be appointed the sole manager of each of the Liquidating Debtors and shall have full authority to administer the provisions of the Plan. The Liquidating Debtors may employ one or more Persons to assist in performing duties under the Plan. On and after the Effective Date, the Liquidating Debtors may effectuate the Wind Down of the Estates, including (i) payment of all Wind Down Costs, (ii) resolving Disputed Claims, if any, and (iii) effectuating distributions to holders of Allowed Claims and Allowed Interests; (iv) otherwise implementing the Plan, the Wind Down and the closing of the Bankruptcy Cases; and (v) undertaking such other matters relating to implementation of the Plan as are deemed necessary and appropriate by the Liquidating Debtors. The Liquidating Debtors may pay the charges that they incur on or after the Effective Date for Professional Persons' fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

(b) The Liquidating Debtors will continue to exist after the Effective Date to the extent needed to operate the Non-Transferred Assets in accordance with the Management Agreement subsequent to closing on the Sale until such Non-Transferred Assets are transferred to Purchaser.

(c) Notwithstanding any transfer of Causes of Action to the Purchaser, the Liquidating Debtors or Reorganized Debtors, as applicable shall retain the right to assert such Causes of Action solely for the purpose of asserting defenses against Claims which have been or are asserted against the Debtors, *provided, however*, the Liquidating Debtors or Reorganized Debtors, as applicable may ~~only not~~ object to ~~Mission Critical Vendor Claims or Claims that are Assumed Liabilities if and as directed by Purchaser~~ (i) Mission Critical Vendor Claims, (ii) Claims that are Assumed Liabilities as to counterparties to contracts assumed and assigned to Purchaser under the APA, (iii) customers of the Business, and (iv) any other party determined by Purchaser in its sole discretion to be important to the operation of the Business, and designated by Purchaser prior to the Closing.

(d) Except as otherwise provided in this Plan, the Liquidating Debtors will continue to exist after the Effective Date as separate corporate entities, in accordance with the applicable laws of the respective jurisdictions in which they are incorporated or organized, for the purposes of satisfying their obligations under the Plan, including making distributions as required under the Plan and effectuating the Wind Down. Except as otherwise directed by the Purchaser pursuant to Article 5.1(c), on or after the Effective Date, the Liquidating Debtors, in

their sole and exclusive discretion, may take such action as permitted by applicable law as such Liquidating Debtors may determine is reasonable and appropriate, including, but not limited to, causing: (i) a Liquidating Debtor to be merged into another Liquidating Debtor; (ii) a Liquidating Debtor to be dissolved; (iii) the legal name of a Liquidating Debtor to be changed; or (iv) the closing of a Liquidating Debtor's case after the Final Distribution Date.

5.5. *Plan Administrator.*

1. *Appointment.* The Debtors and the Purchaser shall jointly designate a person, who will serve as the Plan Administrator; provided, however, that the Plan Administrator shall be subject to removal by the Bankruptcy Court for cause shown at any time.

2. *Immunity.* The Plan Administrator shall not be liable for any action it takes or omits to take that it believes in good faith to be authorized or within its rights or powers unless it is ultimately and finally determined by a court of competent jurisdiction that such action or inaction was the result of fraud, gross negligence or willful misconduct.

3. *Resignation, Death or Removal.* The Plan Administrator may be removed by the Bankruptcy Court upon application for good cause shown. In the event of the resignation or removal, liquidation, dissolution, death or incapacity of the Plan Administrator, the Liquidating Debtors and Purchaser shall designate another person to become Plan Administrator and thereupon the successor Plan Administrator, without any further act, shall have all of the rights, powers, duties and obligations of its predecessor.

4. *Authority of Plan Administrator.* The Plan Administrator shall have the authority on behalf of the Liquidating Debtors to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform the Liquidating Debtors' duties under this Plan; (ii) make all applicable distributions or payments contemplated hereby; (iii) employ professionals to represent the Liquidating Debtors with respect to the Liquidating Debtors' responsibilities, and (iv) exercise such other powers as may be vested in the Liquidating Debtors by order of the Bankruptcy Court (including any order issued after the Effective Date), pursuant to this Plan, or as deemed by the Plan Administrator to be necessary and proper to implement the provisions hereof.

5. *Expenses Incurred on or After the Effective Date.* Except as otherwise provided in the Plan, after consultation with and agreement of Purchaser, the amount of any reasonable fees and expenses incurred by the Plan Administrator on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney and other professional fees and expenses and reasonable compensation and reimbursement of expenses to the Plan Administrator) of the Liquidating Debtors shall constitute Wind Down Costs and shall be paid in Cash from proceeds available for such expenses pursuant to the Plan without notice or hearing or any order of the Bankruptcy Court.

5.6. *Wind Down of the Debtors' Estates.*

(a) The Plan Administrator shall oversee the Liquidating Debtors' Wind Down and shall cause the Liquidating Debtors to make distributions to, and otherwise hold all

property of the Liquidating Debtors for the benefit of, holders of Allowed Claims and Allowed Interests consistent and in accordance with the Plan and the Confirmation Order. The Liquidating Debtors (including the Plan Administrator) shall not be required to post a bond in favor of the United States.

(b) Except as otherwise provided in the Plan, the Plan Administrator shall have the power and authority to perform the following acts on behalf of the Liquidating Debtors, in addition to any powers granted by applicable non-bankruptcy law or conferred by any other provision of the Plan or orders of the Bankruptcy Court: (i) take all steps and execute all instruments and documents necessary to make distributions to holders of Allowed Claims, the appropriate Pre-Petition Debenture Agent and the Tranche B Agent, as applicable; (ii) object to Claims as provided in this Plan and prosecute such objections; (iii) resolve, compromise and/or settle any objections to the amount, validity, priority, treatment, allowance or priority of Claims, Administrative Expenses, or Interests; (iv) comply with this Plan and the obligations hereunder; (v) if necessary, employ, retain, or replace professionals to represent the Liquidating Debtors with respect to their responsibilities; (vi) establish, replenish or release reserves as provided in this Plan, as applicable; (vii) take all actions necessary or appropriate to enforce the Debtors' or Liquidating Debtors' rights under the Auction Sale Order or any Sale Order, and any related document and to fulfill, comply with or otherwise satisfy the Debtors' or Liquidating Debtors' covenants, agreements and obligations under any APA and any related document; (viii) make all determinations on behalf of the Debtors or Liquidating Debtors under any APA; (ix) prepare and file applicable tax returns for any of the Debtors or Liquidating Debtors; (x) deposit funds of the Liquidating Debtors, draw checks and make disbursements consistent with the terms of this Plan; (xi) purchase or continue insurance protecting the Debtors, the Liquidating Debtors, Plan Administrator and the property of the Liquidating Debtors; (xii) seek entry of a final decree in any of the Bankruptcy Cases at the appropriate time; prosecute, resolve, compromise and/or settle any litigation; (xiii) abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization (as such term is described in Internal Revenue Code section 501(c)(3) (whose contributions are deductible under Internal Revenue Code section 170)) of the Plan Administrator's choice, any assets that are of no material benefit, including distributable Cash hereunder; and (xiv) take such other action as the Plan Administrator may determine to be necessary or desirable to carry out the purpose of this Plan.

(c) Except as otherwise provided in an executed Management Agreement, following the Effective Date, the Liquidating Debtors shall not engage in any business activities or take any actions except those necessary in the judgment of the Liquidating Debtors to effectuate the Plan, the Wind Down and the compliance with any obligations under any APA or Sale Order. On and after the Effective Date, the Liquidating Debtors may take such action and settle and compromise Claims or Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or the Confirmation Order.

5.7. *Credit Agreements, Existing Securities and Agreements.*

Except as otherwise provided in this Plan, to the extent not previously canceled and discharged under a prior Sale Order, on the Effective Date, all agreements, instruments, and other documents evidencing any Claim against or Interest in a Debtor (other than any *Subsidiary*

Debtors' Interests) and any rights of any holder in respect thereof, including any security interests or Liens in Assets of the Debtors, shall be deemed, discharged and of no force or effect against the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, the Assets and the Purchaser, provided, however, that Pivotal Global Capacity LLC as successor holder of the Pre-Petition Debentures and Pivotal GC Senior Loan Documents (as defined in the Final DIP Order) and DIP Lenders may continue to hold and may exercise its rights and remedies as a secured creditor, including with respect to Magenta assets and/or Interests. The holders of or parties to such instruments, securities and other documentation (other than any *Subsidiary Debtors' Interests*) will have no rights arising from or relating to such instruments, securities and other documentation against the Debtors, Liquidating Debtors or Reorganized Debtors, as applicable, Purchaser or the Assets, except the rights expressly provided for in the Plan, including as set forth in this section, but shall reserve any and all rights arising therein against all other Persons, unless specifically released under the Plan.

5.8. *Assumed Liabilities.*

Unless otherwise provided in the Plan, any order of the Bankruptcy Court, or any APA, to the extent not previously accomplished under a prior Sale Order, on the Effective Date, the Purchaser shall be responsible for payment and satisfaction of all Assumed Liabilities. All Persons holding Claims and Interests arising out of or concerning any Assumed Liability shall be forever barred, estopped and permanently enjoined from asserting against the Debtors, Liquidating Debtors or the Plan Administrator or any of their property, such Persons' Claims or Interests (as applicable) arising out of or concerning such Assumed Liabilities. For the avoidance of doubt and notwithstanding anything to the contrary herein, unless a Reorganization Election is made, Newco shall only be required to fund the Exit Capital Funding amount and other Assumed Liabilities set forth in Schedule 2 of the Plan Support Agreement and Wind Down Costs set forth in the Wind Down Budget [inapplicable under sale to Pivotal Global Capacity, LLC]. The APA of Pivotal Global Capacity LLC provides that Assumed Liabilities includes postpetition accrued and unbilled (a) obligations under assumed Contracts and Real Property Leases and (b) Taxes of Governmental Units which will be paid when invoiced and due in the ordinary course after Closing.

5.9. *Cancellation of Certain Existing Security Interests.*

To the extent not previously accomplished under a prior Sale Order, upon satisfaction of an Allowed Secured Claim in accordance with the provisions of this Plan, all Liens and Encumbrances securing such Allowed Secured Claims shall be automatically cancelled and released and shall be of no effect whatsoever against the Assets, and, without limiting the foregoing, at the request of the Liquidating Debtors or Reorganized Debtors, as applicable or the Purchaser, the holders of any Allowed Secured Claims in Classes 1, 2, 3, 4 and 5 shall execute and deliver to the Purchaser any termination statements, instruments of satisfaction, or releases of all security interests with respect to their Secured Claims that may be reasonably required in order to terminate any related financing statements, mortgages, mechanic's liens, or lis pendens, provided, however, that Pivotal Global Capacity LLC as successor holder of the Pre-Petition Debentures and DIP Lenders shall continue to hold and may exercise its rights and remedies as a secured creditor with respect to Magenta assets and/or Interests. Upon satisfaction of the Secured Claims in Classes 1, 2, 3, 4, and 5 pursuant to the

terms of this Plan, to the extent deemed necessary or appropriate by the Purchaser, the Liquidating Debtors or Reorganized Debtors, as applicable shall have the authority on behalf of and in the name of the holders of the Secured Claims in Classes 1, 2, 3, 4, and 5 to execute, deliver and file documents to terminate any related financing statements, mortgages, mechanic's liens, or lis pendens.

5.10. *Managers, Officers and any Boards of Directors.*

(a) *Officers and Managers.* The managers and any officers of the Debtors immediately prior to the Effective Date, in their capacities as such, shall be deemed removed from such positions as of the Effective Date.

(b) *Boards.* The members of any board of directors or board of managers of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing authority with respect to the Liquidating Debtors or Reorganized Debtors, as applicable on or after the Effective Date and each such member will be deemed to have resigned on the Effective Date.

(c) *Plan Administrator as Sole Manager, Officer and Director.* The Plan Administrator shall be the sole manager, officer and sole member of any board of directors and/or board of managers of each of the Liquidating Debtors from and following the Effective Date without the need for board or shareholder or membership vote and without any requirement of further action by any members, stockholders, managers, officers, or boards of directors or managers of the Debtors and shall have all rights of a manager, officer and director of the Liquidating Debtors under applicable non-bankruptcy law, and all rights conferred under the Confirmation Order and this Plan.

5.11. *Corporate Action.*

(a) Entry of the Confirmation Order shall establish conclusive corporate and other authority (and evidence of such corporate and other authority) required for each of the Debtors or Liquidating Debtors or Reorganized Debtors, as applicable, to undertake any and all acts and actions required to implement or contemplated by the Plan (including, without limitation, the execution and delivery of any APA), and such acts and actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without the need for board or shareholder or membership vote and without any requirement of further action by any members, stockholders, managers, officers, or boards of directors or managers of the Debtors.

(b) On the Effective Date, the Liquidating Debtors (through the Plan Administrator) or Reorganized Debtors, as applicable, are authorized to execute and/or deliver the agreements, documents and instruments contemplated by the Plan, and any APA and any Plan Documents, and any schedules, exhibits or other documents attached thereto or contemplated thereby, in the name and on behalf of the Debtors and the Liquidating Debtors or Reorganized Debtors, as applicable.

(c) Upon entry of a final decree in each Bankruptcy Case, unless otherwise reorganized in accordance with this Article V or not previously dissolved, the applicable

Liquidating Debtor shall be deemed automatically dissolved and wound up without any further action or formality which might otherwise be required under applicable non-bankruptcy laws.

ARTICLE VI

DISTRIBUTIONS

6.1. *Distributions.*

The Liquidating Debtors or Reorganized Debtors, as applicable, shall make all Plan Distributions, other than distributions to the holders of Allowed Mission Critical Vendor Claims, to the appropriate holders of Allowed Claims and Allowed Interests or to the appropriate Pre-Petition Debenture Agent or Tranche B Agent, as applicable, in accordance with the terms of this Plan. The Purchaser shall make all Plan Distributions to the holders of Allowed Mission Critical Vendor Claims in accordance with the terms of the APA except for Cure payments on the Effective Date, which shall be made by the Liquidating Debtors or Reorganized Debtors, as applicable.

6.2. *No Postpetition Interest on Claims and Allowed Interests.*

Unless otherwise specifically *provided* for in the Plan, Confirmation Order or other order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on any Claims or Interests, and no holder of a Claim or Interest shall be entitled to interest accruing on such Claim or Interest on or after the Petition Date.

6.3. *Date of Distributions.*

Unless otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon thereafter as is practicable, provided that the Liquidating Debtors or Reorganized Debtors, as applicable, may utilize periodic distribution dates to the extent appropriate. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.4. *Distribution Record Date.*

Except as otherwise provided in the Plan, as of the close of business on the Distribution Record Date, the various lists of holders of Claims or Interests in each of the Classes, as maintained by the Debtors, or their agents, shall be deemed closed and there shall be no further changes in the record holders of any of the Claims. The Liquidating Debtors or Reorganized Debtors, as applicable, shall not have any obligation to recognize any transfer of Claims or Interests occurring after the close of business on the Distribution Record Date.

6.5. *Disbursing Agent.*

Except as otherwise provided in the Plan, the Liquidating Debtors or Reorganized Debtors, as applicable, shall serve as the Disbursing Agent and all distributions under this Plan shall be made by the Liquidating Debtors or Reorganized Debtors, as applicable, on and after the Effective Date as provided herein. Neither the Plan Administrator nor the Liquidating Debtors nor Reorganized Debtors, as applicable, shall be required to give any bond or surety or other security for the performance of any duties under this Plan.

6.6. *Delivery of Distribution.*

The Liquidating Debtors or Reorganized Debtors, as applicable, will make all distributions or payments to any holder of an Allowed Claim (other than a Pre-Petition Debenture Claim, Tranche B Loan Claim, and Mission Critical Vendor Claim) or Allowed Interest as and when required by this Plan at: (i) the address of such holder on the books and records of the Liquidating Debtors or their agents; (ii) at the address in any written notice of address change delivered to the Liquidating Debtors or Reorganized Debtors, as applicable, including any addresses included on any filed proofs of Claim or transfers of Claim filed pursuant to Bankruptcy Rule 3001 (provided that such transfer of Claim is docketed by the Bankruptcy Court on or before twenty-one (21) days prior to the Distribution Record Date).

The Liquidating Debtors or Reorganized Debtors, as applicable, will make all distributions or payments to any holder of an Allowed Pre-Petition Debenture Claim and Allowed Tranche B Loan Claim, as and when required by this Plan, to Pivotal Global Capacity, LLC as successor to the appropriate Pre-Petition Debenture Agent or Tranche B Agent, as applicable. The Purchaser will make all distributions or payments to any holder of an Allowed Mission Critical Vendor Claim as and when provided in the APA at: (i) the address of such holder on the books and records of the Liquidating Debtors or Reorganized Debtors, as applicable, or their agents; (ii) at the address in any written notice of address change delivered to the Purchaser, including any addresses included on any filed proofs of Claim or transfers of Claim filed pursuant to Bankruptcy Rule 3001 (provided that such transfer of Claim is docketed by the Bankruptcy Court on or before twenty-one (21) days prior to the Distribution Record Date).

In the event that any distribution to any holder is returned as undeliverable, no distribution or payment to such holder shall be made unless and until the applicable Liquidating Debtor or Reorganized Debtors, as applicable, or Purchaser, as applicable, has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter such distribution shall be made to such holder without interest, provided, however, such distributions or payments shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety days from the relevant Distribution Date. Any such undeliverable distribution, other than an undeliverable distribution to the holder of an Allowed Mission Critical Vendor Claim, shall be made available for distribution to the holders of the remaining Allowed Claims or Allowed Interests and no further payments shall be made to the holder of an Allowed Claim or Allowed Interests on account of such undeliverable distribution. Any undeliverable distribution on behalf of an Allowed Mission Critical Vendor Claim shall be distributed to Purchaser.

6.7. *Unclaimed Property.*

Holders of Allowed Claims or Allowed Interests shall have 120 days from the date of any Plan Distribution paid by check to negotiate such check. To the extent any such check is not negotiated within such time period, the payment on such check shall be stopped and the corresponding funds shall be made available to the Purchaser, and no further payments shall be made to the holder of an Allowed Claim or Allowed Interest on account of such unclaimed property and such Claim or Interest shall be treated as though such Claim or Interest has been disallowed. The Liquidating Debtors or Reorganized Debtors, as applicable, and Purchaser, as the case may be, shall have no obligation to attempt to locate any holder of an Allowed Claim or Allowed Interest other than by reviewing the Debtors' books and records, proofs of claim and proofs of interest filed against the Debtors or transfers of Claim filed pursuant to Bankruptcy Rule 3001 (provided that such transfer of Claim is docketed by the Bankruptcy Court on or before twenty-one (21) days prior to the Distribution Record Date).

6.8. *Undistributed Cash*

Other than "Unclaimed Property" subject to Article 6.7 of the Plan, all Cash that is not otherwise distributed in accordance with Article III of the Plan shall be distributed to Purchaser.

6.9. *Reserve Accounts.*

On or as soon as practicable after the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable, may establish and maintain separate reserve accounts for Disputed Claims or Disputed Interests against each Debtor if such were to become Allowed Claims or Allowed Interests if any Distributions to holders of such Claims or Interests are expected to be made.

6.10. *Satisfaction of Claims and Interests.*

Unless otherwise provided in the Plan, any distributions and deliveries to be made on account of Allowed Claims and Allowed Interests hereunder shall be in complete settlement, satisfaction and discharge of such Allowed Claims and Allowed Interests.

6.11. *Manner of Payment Under Plan.*

Except as specifically provided in the Plan, at the option of the Liquidating Debtors or Reorganized Debtors, as applicable, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

6.12. *Fractional Cents/Fractional Shares.*

Notwithstanding any other provision of the Plan to the contrary, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent. Notwithstanding any other provision of the Plan to the contrary, no fractional shares

will be issued under this Plan and any fractional shares that otherwise would be distributed under this Plan will be rounded to nearest unit.

6.13. *No Distribution in Excess of Amount of Allowed Claim.*

Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a Plan Distribution in excess of the Allowed amount of such Claim.

6.14. *Setoffs and Recoupments.*

The Liquidating Debtors or Reorganized Debtors, as applicable, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off and/or recoup against any Allowed Claim, and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any and all claims, rights and Causes of Action that the Liquidating ~~Debtor~~ Debtors or ~~its~~ Reorganized Debtors, as applicable, or their successors may hold against the holder of such Allowed Claim after the Effective Date; provided, however, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim hereunder will constitute a waiver or release by a Debtor, Liquidating Debtor or Reorganized Debtor, as applicable, or any successor of any and all claims, rights and Causes of Action that a Debtor, Liquidating Debtors or Reorganized Debtors, as applicable, or any successor may possess against such holder.

6.15. *Withholding and Reporting Requirements.*

In connection with this Plan and all distributions hereunder, the Liquidating Debtors or Reorganized Debtors, as applicable, shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Plan Distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Debtors or Reorganized Debtors, as applicable, shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of any Plan Distribution to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanisms the Liquidating Debtors or Reorganized Debtors, as applicable, believe are reasonable and appropriate, including requiring a holder of a Claim or Interest to submit appropriate tax and withholding certifications. Notwithstanding any other provision of this Plan: (i) each holder of an Allowed Claim or Allowed Interest that is to receive a distribution under this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations on account of such distribution; and (ii) no Plan Distributions shall be required to be made to or on behalf of such holder pursuant to this Plan if, after 120 days from the date of transmission of a written request to the holder of an Allowed Claim or Allowed Interest, the Debtors do not receive a valid, completed IRS form from such holder of an Allowed Claim or Allowed Interest, which is otherwise required for reporting purposes, and such holder shall be treated as if their Claims or Interests had been disallowed.

ARTICLE VII

PROCEDURES FOR RESOLVING CLAIMS

7.1. *Objections to Claims.*

The Liquidating Debtors or the Reorganized Debtors, as applicable, shall be entitled to object to Claims and Interests after the Effective Date, *provided, however*, the Liquidating Debtors or Reorganized Debtors may ~~only~~ not object to (i) Mission Critical Vendor Claims ~~or~~, (ii) Claims that are Assumed Liabilities ~~if~~ as to counterparties to contracts assumed and as directed assigned to Purchaser under the APA, (iii) customers of the Business, and (iv) any other party determined by Purchaser in its sole discretion to be important to the operation of the Business, and designated by Purchaser prior to the Closing. Any objections to those Claims (other than Administrative Expense Claims) and Interests, shall be filed no later than one-hundred twenty (120) days after the Effective Date, subject to any extensions granted pursuant to further order of the Bankruptcy Court, which extensions may be obtained by the Liquidating Debtors or Reorganized Debtors, as applicable, without notice upon ex parte motion. Any Claims and Interests filed after the Bar Date shall be deemed disallowed and expunged in their entirety without further order of the Bankruptcy Court. Notwithstanding any authority to the contrary, an objection to a Claim or Interest shall be deemed properly served on the holder if the objecting party effects service in any of the following manners: (i) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (ii) by first class mail, postage prepaid, on the signatory on the proof of claim; or (iii) on any counsel that has appeared on the holder's behalf in the Bankruptcy Cases (so long as such appearance has not been subsequently withdrawn). From and after the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable, in consultation with Purchaser, may settle or compromise any Disputed Claim or Disputed Interest without need for notice or approval of the Bankruptcy Court.

7.2. *Disputed Claims and Disputed Interests.*

(a) *No Distributions or Payments Pending Allowance.* Except as provided in Section 7.3, Disputed Claims and Disputed Interests shall not be entitled to any Plan Distributions unless and until such Disputed Claims or Disputed Interests become Allowed Claims or Allowed Interests.

(b) *Plan Distributions to Holders of Subsequently Allowed Claims and Allowed Interests.* On each Distribution Date (or such earlier date as determined by the Liquidating Debtors or Reorganized Debtors, as applicable, in their sole discretion but subject to Section 7.3), the Liquidating Debtors or Reorganized Debtors, as applicable, or Purchaser, as the case may be, will make distributions or payments: (i) on account of any Disputed Claim or Disputed Interest that has become an Allowed Claim or Allowed Interest since the occurrence of the previous Distribution Date; and (ii) on account of previously Allowed Claims or Allowed Interests of property that would have been distributed or paid to the holders of such Claims or Interests on the dates distributions previously were made to holders of Allowed Claims or Allowed Interests in such Class had the Disputed Claims or Disputed Interests that have become Allowed Claims or Allowed Interests been Allowed on such dates. The Liquidating Debtors or

[Reorganized Debtors, as applicable](#), or Purchaser, as the case may be, shall distribute in respect of such newly Allowed Claims or Allowed Interests the Plan Consideration as to which holders of such Claims or Interests would have been entitled under this Plan if such newly Allowed Claims or Allowed Interests were fully or partially Allowed, as the case may be, on the Effective Date, less direct and actual expenses, fees, or other direct costs of maintaining Plan Consideration on account of such Disputed Claims and Disputed Interests.

(c) *Distribution of Reserved Plan Consideration Upon Disallowance.* Except as otherwise provided in this Plan, to the extent any Disputed Claim or Disputed Interest has become Disallowed in full or in part (in accordance with the procedures set forth in the Plan), any Plan Consideration held by the Liquidating Debtors [or Reorganized Debtors, as applicable](#), on account of, or to pay, such Disputed Claim or Disputed Interest, including amounts held in any reserve, shall become the sole and exclusive property of the Liquidating Debtors [or Reorganized Debtors, as applicable](#), and shall be applied in accordance with the terms of this Plan.

7.3. *Estimation of Claims.*

For purposes of calculating and making distributions under the Plan, the Liquidating Debtors [or Reorganized Debtors, as applicable](#), shall be entitled to estimate, in good faith and with due regard to litigation risks associated with Disputed Claims, the maximum dollar amount of Allowed and Disputed Claims, inclusive of contingent and/or unliquidated Claims in a particular Class. The Liquidating Debtors [or Reorganized Debtors, as applicable](#), may request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for purposes of determining the Allowed amount of such Claim regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim for purposes of determining the allowed amount of such Claim at any time. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim for allowance purposes, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the objecting party may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved or withdrawn by any mechanism approved by the Bankruptcy Court.

7.4. *No Recourse.*

Notwithstanding that the Allowed amount of any particular Disputed Claim or Disputed Interest is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by this Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims or Allowed Interests in the respective Class, no such holder shall have recourse against the Debtors, the Liquidating Debtors [or Reorganized Debtors, as applicable](#), Plan Administrator, the Purchaser, or any of their respective

professionals, consultants, officers, directors, employees or members or their successors or assigns, or any of their respective property, or the Assets. However, nothing in the Plan shall modify any right of a holder of a Claim under section 502(j) of the Bankruptcy Code, nor shall it modify or limit the ability, if any, of claimants to seek disgorgement to remedy any unequal distribution from parties other than those released under this section. THE ESTIMATION OF CLAIMS AND THE ESTABLISHMENT OF RESERVES UNDER THE PLAN MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.

7.5. *Expenses Incurred On or After the Effective Date.*

Except as otherwise ordered by the Bankruptcy Court, in accordance with Article 5.6(5) hereof, the reasonable fees and expenses of the Plan Administrator and the reasonable fees and expenses incurred by any Professional Person retained by the Liquidating Debtors on or after the Effective Date in connection with implementation of this Plan, including without limitation, reconciliation of objection to, and settlement of Claims, shall constitute Wind Down Costs and shall be paid in Cash by the Liquidating Debtors from proceeds available for such payments pursuant to the Plan.

ARTICLE VIII

MISSION CRITICAL VENDOR CONTRACTS, EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1. *General Treatment.*

To the extent not previously assumed or rejected pursuant to an earlier Sale Order,

(a) As of and subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors shall be deemed to be rejected by the applicable Debtor as of the Effective Date, except for any executory contract or unexpired lease that: (i) previously has been assumed and assigned or assumed pursuant to an order of the Bankruptcy Court; (ii) is designated in an APA as a contract or lease to be assumed or assumed and assigned to a Purchaser (such list of contracts and leases to be assumed, including post-petition contracts and leases assigned to Purchaser, the “~~Schedule~~ **Schedules of Assumed Contracts and Leases**” attached to the APA as Schedules 2.1(b), 2.1(c)(i), 2.1(c)(ii)); or (iii) is the subject of a separate motion to assume or assume and assign or to reject under section 365 of the Bankruptcy Code pending on the Effective Date. For the avoidance of doubt, the Debtors may add any executory contract or unexpired lease to the Schedule of Assumed Contracts and Leases, thereby providing for the assumption or assumption and assignment of such executory contract or lease pursuant to the terms hereof, or move to reject any executory contract or unexpired lease (including any such contracts or leases on the Schedule of Assumed Contracts and Leases), thereby providing for its rejection pursuant to the terms hereof, at any time prior to the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assumptions and assignments-, assignments of post-

petition contracts and leases, and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Listing a contract or lease in the Schedule of Assumed Contracts and Leases or rejecting any contract or lease shall not constitute an admission by the applicable Debtor that the applicable Debtor has any liability thereunder.

(b) Subject to Section 8.2 of this Plan, entry of the Confirmation Order shall, subject to the occurrence of the Effective Date, constitute: (i) the approval, pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code, of the assumption and/or assumption and assignment of the executory contracts and unexpired leases assumed and/or assigned and the post-petition contracts and leases assigned pursuant to Section 8.1(a) and Section 8.1(b) of this Plan; and (ii) the approval, pursuant to sections 365(a) and 1123(b) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 8.1(a) and Section 8.1(b) of this Plan.

8.2. *Claims Based on Rejection of Executory Contracts or Unexpired Leases.*

(a) *Treatment:* Except as otherwise provided in the Plan, all Claims arising from the rejection of executory contracts or unexpired leases, if any, will be treated as Unsecured Claims. All such Claims shall be discharged on the Effective Date, and shall not be enforceable against the Debtors, the Liquidating Debtors, the Reorganized Debtors (if applicable), the Assets, the Purchaser or their respective properties or interests in property (and, for the avoidance of doubt, such rejected contracts and leases shall not constitute Assumed Liabilities).

(b) *Deadline:* *To the extent not otherwise provided pursuant to an earlier Sale Order, each Person who is a party to a contract or lease rejected under the Plan must file with the Bankruptcy Court and serve on the Debtors or, if after the Effective Date, on the Liquidating Debtors or Reorganized Debtors, as applicable, no later than the earlier of (i) thirty (30) days after the entry of an order for the rejection of such contract or lease or (ii) thirty (30) days after the Effective Date, a proof of claim for damages alleged to arise from the rejection of the applicable contract or lease or be forever barred from filing a Claim, or sharing in distributions under the Plan, related to such alleged rejection damages.*

8.3. *Cure of Defaults for Assumed Mission Critical Vendor Contracts, Executory Contracts and Unexpired Leases.*

To the extent not previously assumed or rejected pursuant to an earlier Sale Order and, with respect to Cure Costs, to the extent not previously set pursuant to an earlier order of the Bankruptcy Court,

(a) *Assumption Notice:* The Debtors ~~shall serve~~ served a notice (the “**Assumption Notice**”) (which may be part of or included with the Schedule of Assumed Contracts and Leases) on the applicable counterparty of the potential, assumption, or assumption and assignment, of a executory contracts and unexpired leases that are anticipated to be assumed or assumed and assigned to a Purchaser (the “**Assumed Leases and Contracts**”) in connection with the Sale of the Assets and the amount, if any, that the Debtors contend is the amount needed to cure any defaults and to pay any pecuniary losses with respect to such Assumed Leases and Contracts in their October 31, 2010, Notice of Debtors’ Designation of Successful Bidder in

Conjunction with Reorganization Plan, Rescheduled Sale Hearing, and Assumption and Assignment of Contracts, Executory Contracts and Unexpired Leases and Objection Deadline [DE 369] (the “**Cure Costs**”); provided however, if the Debtors identify additional mission critical vendor contracts, executory contracts and unexpired leases that might be assumed by the Debtors or assumed and assigned to a Purchaser, the Debtors will promptly send a supplemental Assumption Notice to the applicable counterparties to such contract or lease.

(b) *Time for Payment of Cure Costs:* Except to the extent otherwise set forth in the Assumption Notice or otherwise agreed in writing by the Debtors, Purchaser and the non-Debtor party or parties to each such Assumed Lease and Contract to be assigned to a Purchaser, the Purchaser (or the Debtors if so specified in the APA) shall cure any monetary defaults arising under each executory contract and lease to be assumed pursuant to the Plan and assigned to the Purchaser pursuant to Section 8.1(a) or Section 8.1(b) of this Plan, in accordance with section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Cost on the later of: (i) the Effective Date or as soon thereafter as is reasonably practicable; (ii) the date on which the Cure Cost has been resolved (either consensually or through judicial decision at the Cure Dispute Hearing, subject, in any such case, to the terms and conditions of any APA) or as soon thereafter as is reasonably practicable; and (iii) such other date as mutually agreed upon by the Debtors, Purchaser and the non-Debtor party or parties to each such Assumed Lease and Contract to be assigned to a Purchaser. To the extent an Assumed Lease or Contract is not to be assigned to a Purchaser, the Debtors shall cure monetary defaults on the later of (i) the Effective Date or as soon thereafter as is reasonably practicable; (ii) the date on which the Cure Cost has been resolved (either consensually or through judicial decision at the Cure Dispute Hearing, subject, in any such case, to the terms and conditions of any APA) or as soon thereafter as is reasonably practicable; and (iii) such other date as mutually agreed upon by the Debtors and the non-Debtor party or parties to each such Assumed Lease and Contract.

(c) *Objections to Cure Costs:* Any party that ~~fails~~failed to timely object to the applicable Cure Cost listed on the Assumption Notice by the deadline set forth in the Assumption Notice: (a) shall be forever barred, estopped and enjoined from (x) disputing the Cure Cost relating to any executory contract or unexpired lease set forth in the Assumption Notice, (y) asserting any Claim against the applicable Debtor or the Purchaser or their properties arising under section 365(b)(1) of the Bankruptcy Code other than as set forth on the Assumption Notice; and (b) shall be deemed to have consented to the assumption or the assumption and assignment of such executory contract and unexpired lease and shall be forever barred and estopped from asserting or claiming against the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, the Purchaser or any other assignee of the relevant executory contract or unexpired lease that any additional amounts are due or defaults exist, or conditions to assumption or assumption and assignment of such executory contract or unexpired lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise). Any objection relating to the Cure Cost shall specify the Cure Cost proposed by the counterparty to the applicable contract or lease.

(d) *Cure Dispute Hearing:* In the event of a timely objection (a “**Cure Dispute**”) regarding: (i) any Cure Cost; (ii) the ability of the Debtors or the Purchaser to demonstrate “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under any contract or lease to be assumed; or (iii) any other matter

pertaining to the proposed assumption or assumption and assignment, a Hearing will be held by the Bankruptcy Court to consider any such objection (a “**Cure Dispute Hearing**”). The cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made at the time set forth in Section 8.3(b) of this Plan following the entry of a Final Order resolving such Cure Dispute and approving the assumption. To the extent a Cure Dispute relates solely to a Cure Cost, the applicable Debtor may assume or assume and assign the applicable contract or lease prior to the resolution of the Cure Dispute provided that the Purchaser (or the Debtors if such Assumed Contract or Lease is not to be assigned to a Purchaser) establishes a reserve containing Cash in an amount sufficient to pay the full amount asserted as cure payment by the non-Debtor party to such contract or lease (or such smaller amount as may be fixed or estimated by the Bankruptcy Court). To the extent the Cure Dispute is resolved or determined unfavorably to the applicable Debtor in its judgment, then such contract or lease shall not be assumed under the Plan and the Debtor, or the Liquidating Debtor or Reorganized Debtors, as applicable, if after the Effective Date, shall have the right to reject the applicable executory contract or unexpired lease effective as of the Effective Date after such determination at the Cure Hearing.

8.4. *Compensation and Benefit Programs*

To the extent any exist, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtors applicable to their respective employees, retirees and non-employee directors including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life, accidental death and dismemberment insurance plans are treated as executory contracts under the Plan and on the Effective Date shall be rejected as the Effective Date.

ARTICLE IX

CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

9.1. *Conditions Precedent to Confirmation.*

(a) Confirmation of this Plan is subject to entry of the Confirmation Order by the Bankruptcy Court in form and substance reasonably acceptable to the Debtors, DIP Lenders and the Purchaser.

9.2. *Conditions Precedent to the Effective Date.*

The occurrence of the Effective Date is subject to the satisfaction of the following conditions precedent (or conditions subsequent with respect to actions that are to be taken contemporaneously with or immediately upon the occurrence of the Effective Date). With respect to the conditions set forth in (a), (b), and (d) below, the Debtors and the Purchaser may jointly waive any such condition. With respect to the conditions set forth in (c) below, only the Purchaser may waive any such condition.

(a) The Confirmation Order in form and substance reasonably acceptable to the Debtors, the ~~Tranche A Lender, the Tranche B~~ DIP Lenders and Purchaser shall have become

a Final Order, and shall not be stayed, provided that the Effective Date may occur if the Confirmation Order is not a Final Order at the option of the Purchaser;

(b) The Plan Documents, including any Management Agreement, shall have been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by a Debtor that the Effective Date has occurred) contained therein shall have been satisfied or waived in accordance therewith;

(c) All material governmental, regulatory and third party approvals, authorizations, certifications, rulings, no action letters, opinions, waivers, and/or consents in connection with the Plan, if any, have been obtained (unless failure to do so will have a material adverse effect on the Debtors) and remain in full force and effect, and there exists no claim, action, suit, investigation, litigation or proceeding, pending or threatened in any court or before any arbitrator or governmental instrumentality, which would prohibit the consummation of the Plan;

(d) Closing on the Sale of the Assets shall have occurred or shall occur on the Effective Date, and the Liquidating Debtors or Reorganized Debtors, as applicable, shall have received from the Purchaser the Sale Proceeds.

(e) The Fee Claims due and unpaid on the Effective Date shall not exceed the Fee Payment Cap, as such Fee Payment Cap is reduced by U.S. Trustee's Fees and Wind Down Costs.

9.3. *Filing Notice of Effective Date.*

Within two (2) Business Days of the occurrence of the Effective Date, the Liquidating Debtors or Reorganized Debtors, as applicable, shall file a notice of occurrence of the Effective Date signed by the counsel for the Debtors in Possession and, if different, counsel to the Liquidating Debtors or Reorganized Debtors, as applicable, in the record of the Bankruptcy Court reflecting (a) that the foregoing conditions to the occurrence of the Effective Date have been satisfied or waived by the Debtors and any other person whose consent or waiver is required, (b) the date of the Effective Date, and (c) acknowledging that the Effective Date has occurred on and as of such date.

ARTICLE X

EFFECT OF CONFIRMATION

10.1. *Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the Effective Date, the provisions of this Plan shall bind any holder of a Claim against, or Interest in, the Debtors and inure to the benefit of and be binding on such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under this Plan and whether or not such holder has accepted this Plan.

10.2. *Term of Pre-Confirmation Injunctions or Stays.*

Unless otherwise provided herein, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

10.3. *Injunction Against Interference With Plan.*

Upon the entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former affiliates, employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan.

10.4. *Injunction.*

(a) Except as otherwise provided in this Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtors or the Estates are, with respect to any such Claims or Interests, permanently enjoined after the Confirmation Date from: commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Assets, the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, or any of their property, or any direct or indirect transferee of any property of or direct or indirect successor in interest to, any of the foregoing Persons or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any pre judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Assets, the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, or any of their property, or any direct or indirect transferee of any property of or direct or indirect successor in interest to, any of the foregoing Persons including the Purchaser, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Assets, the Debtors, the Liquidating Debtors or Reorganized Debtors, as applicable, the Purchaser or any of their property, or any direct or indirect transferee of any property of or successor in interest to, any of the foregoing Persons (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan to the full extent permitted by applicable law; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; provided, however, that nothing contained herein shall preclude such Persons from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of this Plan.

(b) By accepting distributions pursuant to this Plan, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the Injunctions set forth in this Section.

10.5. *Releases.*

(a) Releases by the Debtors. As of the Effective Date, and subject to its occurrence, for the good and valuable consideration provided by each of the Released Parties, any and all claims of the Debtors against any of the Released Parties based in whole or in part upon any act, omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date shall be forever released and discharged.

(b) Releases by Holders of Claims. Except as otherwise provided in this Plan or the Confirmation Order, on the Effective Date: (i) each holder of a Claim or Interest that voted to accept the Plan; and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all holders of Claims and Interests, in consideration for the obligations of the Debtors under this Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with this Plan, and each Person (other than the Debtors) that has held, holds or may hold a Claim or Interest, as applicable, shall be deemed to have unconditionally released the Released Parties from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

10.6. *Exculpation and Limitation of Liability.*

None of the Released Parties or the Liquidating Debtors or Reorganized Debtors, as applicable, or the Plan Administrator shall have any liability to any Entity for any act or omission in connection with or arising out of the negotiation of this Plan, the pursuit of approval of the Disclosure Statement, the pursuit of confirmation of this Plan, the consummation of this Plan, the transactions contemplated and effectuated by the Plan, the administration of this Plan, or the property to be distributed under either such plan or any other act or omission during the administration of the Chapter 11 Cases or the Debtors' Estates. In all respects, each of the foregoing shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

10.7. *Injunction Related to Releases and Exculpation.*

Upon the Effective Date, except as otherwise provided in the Plan, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to this Plan, including but not limited to the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Sections 10.5 and 10.6 of this Plan. Such injunction shall extend to Purchaser and their respective properties and interests in property.

10.8. *Discharge*

Except as otherwise provided in the Plan, to the fullest extent permitted by applicable law (a) on the Effective Date, the Confirmation Order will operate as a discharge

under Bankruptcy Code section 1141(d)(1), and release of any and all Claims, debts (as such term is defined in Bankruptcy Code section 101(12)), Liens, security interests and encumbrances of and against all property of each of the Debtors that arose before confirmation, including without limitation, any Claim of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i) and all principal and interest, whether accrued before, on or after the Petition Date, regardless of whether (i) a proof of claim in respect of such Claim has been filed or deemed filed, (ii) such Claim has been Allowed pursuant to Bankruptcy Code section 502, or (iii) the holder of such Claim has voted on the Plan or has voted to reject the Plan; and (b) from and after the Confirmation Date, (x) all holders of Claims will be barred and enjoined from asserting against the Debtors entitled to such discharge pursuant to the Plan any Claims, debt (as defined in Bankruptcy Code section 101(12)), Liens, security interests and encumbrances of and against all property of each of the Debtors and (y) the Debtors will be fully and finally discharged of any liability or obligation on Disallowed Claims and Disallowed Interests. Except as otherwise specifically provided herein, nothing in the Plan will be deemed to waive, limit or restrict in any manner the discharge granted upon confirmation of the Plan pursuant to Bankruptcy Code section 1141.

10.9. *Retention of Causes of Action/Reservation of Rights.*

Except as expressly provided otherwise in the Plan, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims or Causes of Action, rights of setoff, or other legal or equitable defenses that the Debtors had immediately prior to the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law.

10.10. *No Successor Liability.*

Except as otherwise expressly provided in the Plan or an APA, the Purchaser shall have no responsibility for any liabilities or obligations of the Debtors, the Liquidating Debtors, the Plan Administrator or any other party relating to or arising out of the operations of or Assets of the Debtors, arising prior to the Effective Date. The Purchaser is not, and shall not be deemed to be, a successor to any of the Debtors or Liquidating Debtors by reason of any theory of law or equity, and the Purchaser shall not have any successor or transferee liability of any kind or character, except that the Purchaser shall assume the Assumed Liabilities under the terms and subject to the conditions set forth in the Plan or an APA, and provided that if and to the extent the Reorganization Election is made, the Purchaser shall be the successor to the Debtors for regulatory and operational purposes, but all Claims and liabilities of the Debtors and their bankruptcy estates through the Closing Date and all Interests in the equity securities of the Debtors, except for the Assumed Liabilities, are still discharged under the Plan, and the Purchaser will have no Successor Liabilities under the Reorganization Election except to the extent of the Assumed Liabilities.

ARTICLE XI

RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain, to the fullest extent permitted by applicable law exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157 or otherwise, over all matters arising in, arising under, or related to the Bankruptcy Cases for, among other things, the following purposes:

(a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the Cure Disputes resulting therefrom;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date;

(c) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;

(d) To consider Interests or the allowance, compromise or distributions on account of any Interest.

(e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(f) To issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of this Plan, APA, the Confirmation Order, or any other order of the Bankruptcy Court;

(g) To hear and determine any application to modify this Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) To hear and determine all Fee Claims;

(i) To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(j) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, the APA, the Management Agreement, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(k) To take any action and issue such orders, including any such action or orders as may be necessary after occurrence of the Effective Date and/or consummation of the Plan, as may be necessary to construe, enforce, implement, execute, and consummate this Plan, including any release or injunction provisions set forth herein, or to maintain the integrity of this Plan following consummation;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(n) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(o) To resolve any disputes concerning whether a Person had sufficient notice of the Bankruptcy Cases, the Disclosure Statement Hearing, the Confirmation Hearing, any applicable Bar Date, or the deadline for responding or objecting to a Cure Cost, for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose;

(p) To recover any property of the Estates, wherever located;

(q) To determine any other matter not inconsistent with the Bankruptcy Code;
and

(r) To enter a final decree closing each of the Bankruptcy Cases.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. *Surrender of Instruments*

The Liquidating Debtors or Reorganized Debtors, as applicable, may in their discretion require as a condition to participation under this Plan, that the holder of a note, debenture or other evidence of indebtedness of the Debtors that desires to receive the property to be distributed on account of an Allowed Claim based on such note, debenture or other evidence of indebtedness shall surrender such note, debenture or other evidence of indebtedness to the Liquidating Debtors or Reorganized Debtors, as applicable, or their designee (unless such holder's Claim will be reinstated by this Plan, in which case such surrender shall not be required), and shall execute and deliver such other documents as are necessary to effectuate this Plan; provided, however, that if a claimant is a holder of an equity security, note, debenture or other evidence of indebtedness for which no physical certificate was issued to the holder but which instead is held in book-entry form then the Liquidating Debtors or Reorganized Debtors, as applicable or the indenture trustee for such equity security, note, debenture or other evidence of indebtedness shall waive the requirement of surrender. Except as otherwise provided in this section, if no required surrender of a security, note, debenture or other evidence of indebtedness occurs and a claimant does not provide an affidavit and indemnification agreement, in form and

substance satisfactory to the Liquidating Debtors or Reorganized Debtors, as applicable, that such security, note, debenture or other evidence of indebtedness was lost, then no distribution may be made to any claimant whose Claim or Interest is based on such security, note, debenture or other evidence of indebtedness thereof.

12.2. *Exemption from Certain Transfer Taxes.*

To the fullest extent permitted by applicable law, all sale transactions consummated by the Debtors or the Liquidating Debtors or Reorganized Debtors, as applicable, including the transfers effectuated under this Plan, the sale by the Debtors or Liquidating Debtors or Reorganized Debtors, as applicable, Assets pursuant to section 363(b) of the Bankruptcy Code or this Plan, and any assumption, assignment, and/or sale by the Debtors of their interests in unexpired leases of non-residential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, shall constitute a “transfer under a plan” within the purview of section 1146 of the Bankruptcy Code, and shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

12.3. *Exemption From Securities Laws.* The New Common Stock, including the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, and any new equity securities that are issued to Purchaser by direct purchase of the Interests of Debtor Capital Growth Systems, Inc. and/or one or more of its subsidiaries, extinguishment of existing Interests and issuance of new shares to Purchaser, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of Capital Growth Systems, Inc. or one or more of its subsidiaries into any form of entity under the laws of any state, or otherwise in accordance with the Reorganization Election option in the Plan, shall be exempt from registration under any federal, state or local law, rule or regulation pursuant to Section 1145 of the Bankruptcy Code or other applicable law. Any person who solicits or participates in the offer, issuance, sale or purchase of the New Common Stock, including the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, issued under this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule or regulation governing solicitation of acceptance or rejection of this Plan or the offer, issuance, sale or purchase of securities pursuant thereto. The Debtors have, and upon confirmation of this Plan shall be deemed to have, solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and the Debtors and the Purchaser (and their respective affiliates, agents, directors, managers, officers, employees, advisors, and attorneys) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale, and purchase of any securities offered and sold under this Plan, and therefore are not, and on account of such offer, issuance, sale, solicitation, and/or purchase shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or offer, issuance, sale, or purchase of the securities offered and sold under this Plan.

12.4. *Retiree Benefits.*

On and after the Effective Date, pursuant to section 1129(a)(13) of the Bankruptcy Code, payments in respect of retiree benefits (within the meaning of, and subject to the limitations of, section 1114 of the Bankruptcy Code), if any, at the level established in accordance with section 1114 of the Bankruptcy Code, at any time prior to the Confirmation Date, shall be continued for the duration of the period for which the Debtors had obligated themselves to provide such benefits. Nothing herein shall: (i) restrict Purchaser's right to modify the terms and conditions of the retiree benefits, if any, as otherwise permitted pursuant to the terms of the applicable plans, non-bankruptcy law, or section 1114(m) of the Bankruptcy Code; or (ii) be construed as an admission that any such retiree benefits are owed by the Debtors.

12.5. *Dissolution of Creditors' Committee.*

~~Any~~ The Creditors' Committee shall be automatically dissolved ~~on the later of: (i) the Effective Date; and (ii) the conclusion of any appeals with respect to~~ upon entry of the Confirmation Order ~~(but such functions shall relate solely to services performed related to such appeal), and the Creditors' Committee shall be deemed dissolved as of such date except with respect to the review and prosecution of Fee Claims and any objections thereto. Following the Effective Date, the attorneys and financial advisors, if any, to the Creditors' Committee shall be entitled to assert any reasonable claims for compensation for services rendered or reimbursement for expenses incurred after the Effective Date in connection with the pursuit of their own Fee Claims or the representation of the Creditors' Committee in connection with the review of and the right to be heard in connection with all Fee Claims. All Fee Claims having been determined prior to the Confirmation and no Distributions being payable to unsecured creditors under the Plan, no further services by the Committee are needed.~~ Except as otherwise provided in this Section 12.5, on the Effective Date, all members, employees or agents of the Creditors' Committee shall be released and discharged from all rights and duties arising from, or related to, the Bankruptcy Cases.

12.6. *Amendments/Changes of Plan Structure.*

(a) *Plan Modifications.* This Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims or Allowed Interests pursuant to this Plan, the Debtors may remedy any defect or omission or reconcile any inconsistencies in this Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of this Plan, and any holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

(b) *Amendments to Accommodate Reorganization Election.* To accommodate the Plan structure determined by Purchaser, the Plan may be modified by notice filed with the Court at any time prior to the Effective Date to provide (i) for the change in the defined term "Liquidating Debtors" and the substitution of "Reorganized Debtors" in its place, as appropriate;

(ii) for the retention of Assets by the Reorganized Debtors (rather than a sale of the Assets to Purchaser) and the continued operation of the Reorganized Debtors; (iii) for the issuance and distribution to holders of Claims and Interests of the New Common Stock and Preferred Stock in the Reorganized Debtors' Parent (rather than in Newco) in the same percentages and on the same basis as provided in the Plan [\[inapplicable under sale to Pivotal Global Capacity, LLC\]](#); (iv) for the elimination of the Plan Administrator and the vesting of the rights and duties to implement the Plan in the Reorganized Debtors rather than the Liquidating Debtors; (v) for the appointment of new officers, directors and managers, as applicable, of the Reorganized Debtors; (vi) for the assumption of, and payment of Cure Costs by, the Reorganized Debtors, of any Assumed Leases and Contracts (rather than the assignment thereof to, and payment of Cure Costs by, the Purchaser); and (vii) for other technical conforming changes in provisions of the Plan as deemed necessary by the Purchaser and Debtors to accommodate the change in structure thereof. [The acquisition of the Purchased Assets may be accomplished indirectly, and the form of the acquisition may be an acquisition of the Interests of Debtor Capital Growth Systems, Inc. or one or more of its subsidiaries \(which, in such event, would render the defined term "Purchased Assets" to include such Interests\) by direct purchase of such Interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state.](#) The Plan Consideration and the Plan Distribution shall not be adversely affected by such modifications. Confirmation of this Plan shall constitute findings and conclusions that such modifications shall be deemed to be non-material modifications to the Plan, no holders of Claims or Interests are adversely affected by such modifications, no additional disclosure shall be required with respect to such modifications, no re-solicitation shall be required as a result of such modifications, all acceptances and rejections of the Plan shall be unaffected by the modifications and, if the modifications are made after the Confirmation Hearing, no additional Confirmation Hearing shall be required with respect to such modifications, and the Plan, as so modified, shall constitute the Plan, as defined herein, for all purposes.

(c) *Amendments to Accommodate Sale of Assets.* In the event of a sale of the Assets pursuant to section 363 of the Bankruptcy Code prior to the Effective Date, upon motion by the Debtors (which may be heard on an expedited basis), the Debtors may modify the Plan prior to the Effective Date to provide for technical conforming changes to the Plan to reflect and accommodate the prior sale of the Assets. The Plan Consideration and the Plan Distribution shall not be adversely affected by such modifications. Confirmation of this Plan shall constitute findings and conclusions that the modifications shall be deemed to be non-material modifications to the Plan, no holders or Claims or Interests are adversely affected by such modifications, no additional disclosure shall be required with respect to such non-material modifications, no re-solicitation shall be required as a result of the non-material modifications, all acceptances and rejections of the Plan shall be unaffected by the modifications and, if the modifications are made after the Confirmation Hearing, no additional Confirmation Hearing shall be required with respect to such modifications, and the Plan as so modified, shall constitute the Plan, as defined herein for all purposes.

(d) *Other Amendments.* Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court; [provided, however,](#) that such technical adjustments and

modifications do not adversely affect in a material way the treatment of holders of Claims or Interests under the Plan.

Notwithstanding the foregoing provisions of Article 12.6, no amendment to this Plan shall be effective unless it has been agreed to in writing by the Purchaser.

12.7. *Pooling of Assets*

This Plan is premised upon the pooling of the Assets of the Debtors solely for purposes of actions associated with the confirmation and consummation of the Plan, including, but not limited to, voting, confirmation and distribution. In connection herewith, each and every Claim filed or to be filed in the Chapter 11 Cases against any of the Debtors shall be deemed a single consolidated Claim against and obligation of all the consolidated Debtors. The Plan does not contemplate the merger or dissolution of any of the Debtors or the transfer or commingling of any Assets of any of the Debtors, except to accomplish the distributions under the Plan. Such pooling of Assets shall not affect (other than for Plan voting, treatment, and/or distribution purposes) (i) the legal and corporate structures of the Debtors or the Reorganized Debtors or (ii) any guarantees that may be required to be provided on and after the Effective Date.

12.8. *Revocation or Withdrawal of this Plan.*

Subject to the provisions of the Plan Support Agreement [\[inapplicable to transaction with Pivotal GC\]](#), the Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date. If the Debtors revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors, or if confirmation or the Effective Date as to any or all of the Debtors does not occur, then, with respect to such Debtors: (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person or (iii) constitute an admission of any sort by the Debtors or any other Person.

12.9. *Allocation of Plan Distributions Between Principal and Interest.*

To the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

12.10. *Severability.*

If, prior to the entry of the Confirmation Order, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to

make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.11. *Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent a Plan Document or exhibit or schedule to the Plan provides otherwise, the rights, duties, and obligations arising under this Plan and the Plan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of ~~New York~~ Delaware, without giving effect to the principles of conflict of laws thereof.

12.12. *Inconsistency.*

In the event of any inconsistency among the Plan, the Disclosure Statement, the Plan Documents, any exhibit to the Plan or any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern.

12.13. *Insurance*

Nothing in the Plan will diminish or impair the enforceability of any policies of insurance that may cover Claims against or Interests in the Estates, the Debtors or any related Person. Holders of Claims that are eligible to be satisfied, in whole or in part, through any such policy will be obligated, as a condition to receiving any distributions under the Plan, to seek recovery or assist the Debtors, Reorganized Debtors, Liquidating Debtors, Purchaser, and Plan Administrator, as applicable, in seeking recovery under such policies with regard to such Claims.

12.14. *Successors and Assigns.*

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of the heirs, executors, administrators, successors and/or assigns of such Person.

12.15. *Time.*

In computing any period of time prescribed or allowed by this Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.16. *Credit Bid*

Nothing in this Plan shall impair or otherwise alter the rights of the ~~Tranche A Lender, the Tranche B Agent or the Pre-Petition Debenture Agents~~ DIP Lenders and Pre-Petition

Debenture Lenders to credit bid with respect to any sale of the Assets or the Debtors' equity under either a sale pursuant to section 363(k) of the Bankruptcy Code or this Plan.

12.17. *Exhibits.*

All exhibits to this Plan are incorporated and are a part of this Plan as if set forth in full herein.

12.18. *Notices.*

In order to be effective, all notices, requests, and demands to or upon the Liquidating Debtors from and after the Effective Date shall be in writing (including by email or facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by email or facsimile transmission, when received and confirmed, addressed as follows:

To the Debtors:

~~GLOBAL CAPACITY HOLDCO, LLC Attn: George King 200 S. Wacker Drive,
Suite 1650 Chicago, Illinois 60608
Telephone: (917) 398-0815
gking@globalcapacity.com~~

GLOBAL CAPACITY HOLDCO, LLC
Attn: Patrick Shutt
200 S. Wacker Drive, Suite 1650
Chicago, Illinois 60608
Telephone: (312) 660.5097
pshutt@globalcapacity.com

-and-

HELLER DRAPER HAYDEN PATRICK & HORN, LLC
Attn: Douglas S. Draper, Esq.
ddraper@hellerdraper.com
650 Poydras Street – 25th Floor
New Orleans, LA 70130
Telephone: (504) 299-3300
Facsimile: (504) 299-3399
Counsel to the Debtors and Debtors in Possession

-and-

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
Attn.: Francis A. Monaco, Jr.
fmonaco@wcsr.com
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801

Telephone: (302) 252-4320
Facsimile: (302) 252-4330
Counsel to the Debtors and Debtors in Possession

To the Pre-Petition Debenture Holders, and DIP Lenders:

LEWIS AND ROCA LLP

~~OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP~~ Attn:
~~Adam Friedman, Esq. Park Avenue Tower 65 East 55th Street New York, New
York 10022 Telephone: (212) 451-2216 Facsimile: (212) 451-
2222 afriedman@olshanlaw.com Counsel to Pre-Petition Debenture Holders~~

~~-and-~~

~~Young Conaway Stargatt & Taylor, LLP~~

~~Attn: Susan M. Freeman~~

~~Dawn M. Cica~~

~~40 N. Central Ave., Suite 1900~~

~~Phoenix, AZ 85004-4429~~

~~Telephone: (602) 262-5756 (Freeman)~~

~~Telephone: (702) 949-8257 (Cica)~~

~~SFreeman@LRLaw.com~~

~~DCica@LRLaw.com~~

and

PACHULSKI STANG ZIEHL & JONES LLP

Attn: Laura Davis Jones

Timothy Cairns

~~The Brandywine Building 1000 West 919 N. Market Street, 17th Floor P.O. Box
391~~

~~Wilmington, DE 19801 19899-8705~~

~~Telephone: (302) 571-6600 652-4100~~

~~LJones@pszjlaw.com~~

~~Facsimile: (302) 571-1253~~

~~Counsel to Pre-Petition Debenture Holders~~

~~TCairns@pszjlaw.com~~

~~rbrady@yest.com~~

To the Tranche A DIP Lender:

~~Downtown CP-CGSY, LLC c/o Downtown Capital Partners, LLC One Barker
Avenue, Suite 260 White Plains, New York 10601~~

~~Telephone: (914) 683-9614 Attn: Gary Katz~~

~~-and-~~

~~GREENBERG TRAURIG, LLP Attn: Alan J. Brody, Esq. 200 Park
Avenue Florham Park, New Jersey 07932 Telephone: (973) 443-3542 Facsimile:
(973) 298-1333 BrodyA@gtlaw.com Counsel to Tranche A DIP Lender~~

~~To the Tranche B DIP Lenders:~~

~~BLACK RIVER GLOBAL EQUITY FUND LTD.
as Tranche B Agent
12700 Whitewater Drive
Minnetonka, Minnesota 55343
Attn: Richard Gammill
Telephone: (952) 984-3173
Facsimile: (952) 249-4038
richard.gammill@black-river.com~~

12.19. *Reservation of Rights.*

Except as expressly set forth herein, the Plan shall have no force or effect until the Effective Date. Neither the filing of this Plan, or any statement or provision contained herein, or the taking of any action by the Debtors with respect to this Plan, shall be or shall be deemed to be, an admission or waiver of any rights of the Debtors with respect to any Claims or Interests prior to the Effective Date.

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Dated ~~August 11, 2010~~ January, 2011

/s/ ~~George King~~Patrick Shutt

Global Capacity Holdco, LLC

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

Global Capacity Group, Inc.

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

20/20 Technologies, Inc.

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

Capital Growth Systems, Inc.

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

Centre Path, Inc.

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

Global Capacity Direct, LLC f/k/a

Vanco Direct USA, LLC

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

20/20 Technologies I, LLC

By: ~~George King~~Patrick Shutt

/s/ ~~George King~~Patrick Shutt

NEXVU Technologies, LLC

By: ~~George King~~Patrick Shutt

|

/s/ ~~George King~~Patrick Shutt

FNS 2007, Inc. fka Fronrunner
Network Systems, Corp

|

By: ~~George King~~Patrick Shutt

|

/s/ ~~George King~~Patrick Shutt

Capital Growth Acquisition, Inc.

|

By: ~~George King~~Patrick Shutt

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

/s/ Francis A. Monaco, Jr.

Francis A. Monaco, Jr. (DE Bar No. 2078)
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-and-

Douglas S. Draper (La. Bar No. 5073)
William H. Patrick (La. Bar No. 10359)
Tristan Manthey (La. Bar No. 24539)
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New Orleans, LA 70130
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Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	1/12/2011 4:35:08 PM
Comparison Time	16.69 seconds
compareDocs version	v3.4.2.59

Sources	
Original Document	[#2306018] [v1] GC plan as filed.doc
Modified Document	[#2306018] [v9] GC plan 1/12 (2d changes).doc

Comparison Statistics	
Insertions	255
Deletions	36
Changes	67
Moves	0
TOTAL CHANGES	358

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthor
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Track Changes
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate

Document View	Word	Print
Remove Personal Information	Word	False

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT**(this "Agreement"), dated as of January 12, 2011, by and among Capital Growth Systems, Inc. d/b/a Global Capacity Group, Inc., a Florida corporation (the "Company"), the direct or indirect subsidiaries of the Company set forth on the signature pages hereto and their subsidiaries (together with the Company, each a "Seller," and collectively, the "Sellers") and Pivotal Global Capacity LLC (together with its successors, assigns and/or designees, the "Buyer").

RECITALS

WHEREAS, Sellers are engaged in the business of providing telecom information and logistics solutions to a global client set consisting of systems integrators, telecommunications companies, and enterprise customers (collectively, the "Business");

WHEREAS, on July 23, 2010 (the "Petition Date"), the Sellers commenced voluntary petitions for relief (the "Bankruptcy Cases"), pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"); and

WHEREAS, Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, substantially all of the assets owned and used by Sellers in connection with the Business (other than those assets specifically excluded hereby), (or, in the event of an Alternative Transaction, as defined herein, to acquire equity interests of the Company or one or more of its subsidiaries), all on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I **DEFINITIONS**

1.1 In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement, as amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement. Capitalized terms not defined herein have the meanings set forth or used in the Bankruptcy Code or Plan.

"**Accounts Receivable**" has the meaning specified in Section 2.1(h).

"**Administrative Expense Claims**" shall have the meaning set forth in the Plan, as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers including the amount of Professional Fees.

"**Affiliate**," means, with respect to any Person, any other Person which directly or indirectly Controls, is Controlled by or is under common Control with such Person.

“**Agreement**” has the meaning specified in the preamble.

“**Alternative Transaction**” means any sale, transfer, lease or other disposition, directly or indirectly, of any Purchased Assets or any substantial portion of the Business (or any agreement or understanding to do any of the foregoing) pursuant to any transaction or series of transactions to Buyer, including through the purchase of assets of the Company or one or more of its subsidiaries or through the acquisition of Shares or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term “Purchased Assets” to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, as authorized by the Plan, to be effectuated prior to Closing.

“**Assignment and Assumption Agreement**” has the meaning specified in Section 3.1(e)(iii).

“**Assumed Liabilities**” has the meaning specified in Section 2.3.

“**Auction**” means the auction for the sale of the Purchased Assets contemplated by the Bidding Procedures Order.

“**Bankruptcy Cases**” has the meaning specified in the Recitals, and includes Adversary Proceedings by or against any of the Sellers.

“**Bankruptcy Code**” has the meaning specified in the Recitals.

“**Bankruptcy Court**” has the meaning specified in the Recitals.

“**Bid Submission Deadline**” means the deadline for submission of bids as established pursuant to the Bidding Procedures Order.

“**Bidding Procedures Order**” means the Order (a) Approving Procedures in Connection With Sale of Substantially All of the Debtors' Assets; (b) Scheduling Auction and Hearing to Consider Approval of Sale; (c) Approving Procedures Related to Assumption of Certain Executory Contracts and Unexpired Leases; (d) Approving Form and Manner of Notice Thereof; and (e) Granting Related Relief, entered by the Bankruptcy Court on August 24, 2010 (Docket No. 171), as modified by the Notice of Second Modification of Bidding Procedures filed on October 13, 2010 (Docket 316) and the Notice of Change of Auction Deadline Dates and Sale Hearing dated October 8, 2010 (Docket 305).

“**Bid Procedures**” means those Bid Procedures approved by the Bidding Procedures Order.

“**Business**” has the meaning specified in the Recitals.

“**Business Day**” means any day which is not a Saturday, Sunday or a statutory holiday in the State of Delaware.

“**Buyer**” has the meaning specified in the preamble, acting in its capacity as successor Lenders.

“**Buyer Documents**” has the meaning specified in Section 6.2.

“**Closing**” has the meaning specified in Section 4.1.

“**Closing Cash Payment**” an amount, if any, in cash due and payable at Closing equal to the Purchase Price less the Credit Bid Amount less amounts attributable to Assumed Liabilities, which may be funded through the Sale Facility.

“**Closing Date**” has the meaning specified in Section 4.1.

“**COBRA**” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state law.

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

“**Company**” has the meaning specified in the preamble.

“**Company SEC Reports**” has the meaning specified in Section 5.12

“**Confirmation Order**” means the final, nonappealable order of the Bankruptcy Court that confirms the Plan, which has not been stayed or appealed (other than as consented to by Buyer in its sole discretion).

“**Contracts**” has the meaning specified in Section 2.1(c).

“**Control**” means the power, direct or indirect, to direct or cause the direction of the management and policies or a Person through voting securities, contract or otherwise.

“**Credit Bid Amount**” has the meaning set forth in Section 3.1(d)(i).

“**Creditor**” has the meaning set forth in 11 U.S.C. Section 101.

“**Cure Amount**” has the meaning specified in Section 2.3(c).

“**Cure Schedule**” has the meaning specified in Section 2.3(c).

“**DIP Facility**” means that certain Debtor in Possession Loan and Security Agreement dated as of July 23, 2010 by and among the Sellers, and the Buyer as successor in interest to the Tranche A DIP Lender and the Tranche B DIP Lenders effective December 15, 2010.

“**DIP Facility Budget**” is a working capital budget of the Debtors continuing through the Closing, and shall include all estimated revenue and expenses, including Pre-Closing Costs. Effective as of the Sale Closing, the DIP Facility will be increased by the Sale Facility to fund

the Purchase Price, provided that Buyer may advance portions of the Sale Facility prior to the Closing in its sole discretion.

“**DIP Lenders**” means, the Buyer as successor in interest to the Tranche A DIP Lender and the Tranche B DIP Lenders.

“**DIP Order**” means the final order of the Bankruptcy Court approving the DIP Facility as approved by the Court as Docket 125, the rights under which were assigned to Buyer as successor in interest to the DIP Lenders by order of the Court at Docket 512.

“**Employee Plans**” has the meaning specified in Section 5.8(a).

“**Employees**” means all individuals, whether or not actively at work as of the date hereof, who are employed by one or more of the Sellers or their subsidiaries in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof and prior to the Closing to the extent Buyer approves the hire of such individuals after the date of this Agreement by prior written consent.

“**Encumbrance**” means any lien, claim, charge, security interest, encumbrance, mortgage, pledge, easement, option, right of first refusal, conditional sale or other title retention agreement, defect in title, covenant or other interests or restrictions of any kind.

“**Environmental Law**” means any Law relating to pollution or protection of human and occupational health and safety and the environment, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, handling, discharge, Release, threatened Release of or exposure to Hazardous Substances.

“**Equipment**” has the meaning specified in Section 2.1(a).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” has the meaning specified in Section 5.8(a).

“**Exchange Act**” means the Securities and Exchange Act of 1934, as amended.

“**Excluded Assets**” has the meaning specified in Section 2.2.

“**Excluded Liabilities**” has the meaning specified in Section 2.4.

“**Executive Officer**” means with respect to a corporation the president, chief executive officer, chief operating officer, chief financial officer; with respect to a partnership, the general partners, and; with respect to a limited liability company, the managers; or their functional equivalents.

“**Existing DIP Payment Amounts**” means the outstanding principal drawn by Sellers and accrued and unpaid interest and all costs and fees pursuant to the DIP Facility on the Closing Date.

“**FCC**” means the United States Federal Communications Commission.

“**Fee Claim**” means a Claim by a Professional for compensation, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) (excluding any fees or expenses under sections 503(b)(3) or (4)) or 1103(a) of the Bankruptcy Code in connection with the Bankruptcy Cases. For the avoidance of doubt, fees or expenses sought under sections 503(b)(3) or (4) or payable under section 506(b) are not Fee Claims.

“**Fee Payment Cap**” means the sum of \$1,500,000 payable at the Closing (reduced by any pre-Closing discretionary advances, per Section 3.1(c)) by Pivotal Global Capacity, LLC to be used to satisfy Fee Claims, U.S. Trustee Fees for the post-Closing period and the distributions made in connection with the Closing and Wind Down Budget obligations.

“**Federal Telecommunications Laws**” means the Communications Act of 1934, as amended, including amendments made by the Telecommunications Act of 1996, 47 U.S.C. Section 151 et seq., and the rules, regulations and orders of the FCC.

“**Financial Statements**” has the meaning specified in Section 5.12.

“**GAAP**” means generally accepted accounting principles in the United States as of the date hereof as applied in a manner consistent with the Sellers’ historical accounting policies.

“**Governmental Body**” means any foreign, federal, state, local or other governmental authority or regulatory body.

“**Hazardous Substances**” means any wastes, substances, products, pollutants or materials, whether solid, liquid or gaseous, that (i) is or contains asbestos, polychlorinated biphenyls, radioactive materials, oil, petroleum or any fraction thereof, (ii) requires removal, remediation or reporting under any Environmental Law, or is defined, listed or identified as a “contaminant”, “pollutant”, “toxic substance”, “toxic material”, “hazardous waste” or “hazardous substance” or words of similar meaning and regulatory effect thereunder or (iii) is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is regulated as such by any Governmental Body under any Environmental Law.

“**Intellectual Property**” has the meaning specified in Section 2.1(e).

“**Knowledge**” means the actual knowledge of the Person, including, in the case of a corporation, partnership or limited liability company, the knowledge attributed to such entity based on the actual knowledge of its Executive Officers after due investigation and inquiry.

“**Laws**” means any law, statute, ordinance, regulation, rule, code or rule of common law or otherwise of, or any order, judgment, injunction or decree issued, promulgated, enforced or entered by, any Governmental Body.

“**Lease Assignments**” has the meaning specified in Section 4.2(a)(iii).

“**Legal Proceeding**” means any judicial, administrative or arbitral actions, demands, suits, proceedings (public or private), audit or investigation by or before a Governmental Body or arbitral tribunal excluding any liquidation of claims.

“**Lenders**” means Buyer as successor, collectively, to the Pre-Petition Lenders and the DIP Lenders.

“**Liability**” means any debt, claim, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) and including all costs and expenses relating thereto.

“**Magenta**” means Magenta netLogic Limited, UK. For purposes of this Agreement, all assets and liabilities of Magenta shall be shown on the appropriate Schedules attached hereto, and shall be included in the Purchased Assets acquired under this Agreement at the election of the Buyer.

“**Material Adverse Change**” means a state of facts, event, change or effect with respect to the Business, Purchased Assets, the Assumed Liabilities or the enforceability of any Contract that results in a material adverse effect on the value of the Purchased Assets or the Business, taken as a whole (or, in the event of an Alternative Transaction, the value of the Shares), but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (a) changes in economic, regulatory or political conditions generally, and (b) the usual, customary or ordinary consequences of the filing by a debtor of a Bankruptcy Case contemplating a reorganization or liquidation of the debtor’s assets.

“**Mission Critical Vendors**” means the utility vendors and other critical vendors as identified on Schedule 2.3(c).

“**Modified Plan**” has the meaning specified in Section 7.5.

“**Non-Transferred Assets**” has the meaning specified in Section 2.5.

“**Non-Transferred Assets Documents**” means such bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of all of Sellers’ right, title and interest in the Non-Transferred Assets to Buyer.

“**Order**” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“**Ordinary Course of Business**” means the ordinary and usual course of normal day to day operations of the Business since the Petition Date.

“**Permits**” means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

“**Permitted Encumbrance**” means (i) any of those Encumbrances set forth on Schedule 1.1(a) and/or (ii) any Encumbrance that Buyer agrees in writing to accept.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Body.

“**Personal Property**” has the meaning specified in Section 2.1(a).

“**Petition Date**” has the meaning specified in the Recitals.

“**Plan**” has the meaning specified in Section 7.5.

“**Plan Effective Date**” means the first Business Day on which all conditions set forth in the Plan have been satisfied or waived (other than those that, by their terms, will be satisfied contemporaneously with or immediately upon the occurrence of the Plan Effective Date) and no stay of the effectiveness of the Confirmation Order is in effect.

“**Pre Closing Costs**” consists of operating expenses from the Petition Date through the Closing Date to the extent not covered by the Sellers’ operating income, in accordance with the DIP Facility Budget. Pre Closing Costs shall not duplicate any amounts that have previously been paid by the DIP Facility.

“**Pre-Petition Facility**” means, collectively, the secured financing facilities provided by the Pre-Petition Lenders to Sellers before the Petition Date and all debentures issued to, and other documentation entered into with or in favor of, the Pre-Petition Lenders in connection therewith.

“**Pre-Petition Lenders**” means the Buyer as successor to holders of the August 2009 Debentures, the July 31, 2009 Debentures, the VPP 2009 Debentures, the November 2008 Debentures and the March 2008 Debentures (as each of those terms is defined in the Plan).

“**Principal Amount**” has the meaning specified in Section 3.1(a).

“**Priority Claims**” shall have the meaning set forth in the Plan as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers.

“**Professional Fees**” shall mean any fees to be paid by Debtors due from, paid to or on behalf of a professional (including Capstone Investments) as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers.

“**Purchase Price**” has the meaning specified in Section 3.1(b).

“**Purchased Assets**” has the meaning specified in Section 2.1.

“**Qualified Bidder**” means any Person considered to be a qualified bidder in the Auction pursuant to the Bidding Procedures Order.

“Real Property Leases” has the meaning specified in Section 2.1(b).

“Regulatory Approval Date” shall be the date 180 days following the Regulatory Filing Date.

“Regulatory Dates” shall be the Regulatory Filing Date and the Regulatory Approval Date.

“Regulatory Filing Date” shall be the date 14 days following the Sale Order Date.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration at, into or onto the environment, including movement or migration through or in the environment, whether sudden or non-sudden and whether accidental or non-accidental, or any release, emission or discharge as those terms are defined in any applicable Environmental Law.

“Retained Causes of Action” means any and all claims and causes of action set forth on Schedule 2.2(f).

“Sale Facility” shall be an increase in the DIP Facility funded as of the Closing Date in an amount up to the portion of the Purchase Price and shall consist of the amount of the Existing DIP Payment Amounts and the amounts described in Section 3.1(b)(ii), equal to the Fee Payment Cap to pay Fee Claims, U.S. Trustee Fees incurred as a result of Closing disbursements and post-Closing, and Wind Down Budget in an aggregate amount not exceeding \$1,500,000, Cure Amounts to the extent not paid from operating funds estimated at \$6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders, and Priority Claims estimated at \$706,000 as agreed by the Buyer and Sellers in the Sale Facility Budget.

“Sale Facility Budget” shall consist of the Fee Payment Cap, Cure Amounts, and Priority Claims (including postpetition Taxes). The Sale Facility Budget is an increase in the DIP Facility Budget (which covered Administrative Expenses) to fund the Purchase Price at the Closing.

“Sale Hearing” has the meaning specified in Section 7.3.

“Sale Motion” means the motion filed in the Bankruptcy Court by the Sellers on August 12, 2010 as Docket 115.

“Sale Order” has the meaning specified in Section 7.1.

“Sale Order Date” shall be the date 15 days after the Sale Order is entered, provided there is no stay or appeal.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller” and **“Sellers”** have the meanings specified in the preamble.

“**Sellers Documents**” has the meaning specified in Section 5.2.

“**Shares**” means all the issued and outstanding equity securities of the Company and, at the option of Buyer, one or more of the Sellers or other subsidiaries of the Company.

“**State Regulatory Commission**” means the agency, board, commission, department, or other instrumentality of a State, Territorial, District of Columbia, or Commonwealth government within or associated with the United States, having jurisdiction under that government’s laws to regulate the provision of intrastate telecommunications services.

“**State Telecommunication Laws**” means state statutes governing intrastate telecommunications in the States of the United States, the District of Columbia, and Territories and Commonwealths within or associated with the United States (the “States”), and the rules, regulations, and orders of the State Regulatory Commissions applicable to such intrastate telecommunications.

“**Straddle Period**” has the meaning specified in Section 10.3.

“**Straddle Period Taxes**” has the meaning specified in Section 10.3.

“**Tax**” (and, with correlative meaning, “Taxes” and “Taxable”) means:

(i) any federal, state or local net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and

(ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax sharing arrangement or Tax indemnity agreement.

“**Tax Return**” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

“**Taxing Authority**” means any federal, state, local or foreign government, or any agency, instrumentality or employee thereof, charged with the administration of any Law relating to Taxes.

“**Telecommunications Laws**” means the Federal Telecommunications Laws and the State Telecommunications Laws.

“**Tranche A DIP Lender**” means Downtown CP-CGSY, LLC.

“**Tranche A Loan**” means the loan by Buyer as successor to the Tranche A DIP Lender pursuant to the DIP Facility.

“**Tranche B DIP Lenders**” means the Tranche B DIP Lenders party to the DIP Facility and any other Pre-Petition Lender and, with the consent of the existing Tranche B DIP Lenders, any other person that elects to become a Tranche B Lender under the DIP Facility.

“**Tranche B Loan**” means the loans by Buyer as successor to the Tranche B DIP Lenders pursuant to the DIP Facility.

“**Transfer Taxes**” means all sales (including bulk sales), use, transfer, value added, goods and services, filing, recording, ad valorem, privilege, documentary, gross receipts, registration, conveyance, excise, license, stamp or similar Taxes and fees arising out of, in connection with or attributable to the transactions contemplated by this Agreement.

“**Transferred Employees**” has the meaning specified in Section 9.1.

“**Undisclosed Contract**” has the meaning specified in Section 2.1.

“**U.S. Trustee Fees**” means fees due to the U.S. Trustee by the Sellers, before or after the Closing, arising under 28 U.S.C. § 1930(a)(6) or otherwise, and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

“**WARN**” or “**WARN Act**” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state Law, and the rules and regulations thereunder.

“**Wind Down Budget**” has the meaning ascribed to such term in the Plan, as limited to the amount agreed to by Buyer and Sellers as part of the Purchase Price.

ARTICLE II

PURCHASE AND SALE

2.1 **Purchased Assets.** Upon the terms and subject to the conditions of this Agreement, effective as of the Closing Date, in exchange for the Purchase Price, Buyer shall purchase, acquire and accept out of the bankruptcy estate of the Sellers, and the Sellers on behalf of the Sellers’ estate shall sell, transfer, assign, convey and deliver, free and clear of all Encumbrances (other than any Permitted Encumbrances) to the extent permissible under Sections 363 and 365 of the Bankruptcy Code, to Buyer, on an as-is, where is basis, with no representations or warranties except as otherwise set forth herein, all of the Sellers’ right, title and interest in, to and under the Purchased Assets (which, in the event of an Alternative Transaction involving the acquisition by Buyer of any Shares, is effected through the transfer of all such Shares) . “**Purchased Assets**” shall mean all assets, properties, interests and rights of the Sellers, other than the Excluded Assets, as of the Closing, used or useful in connection with or related to the Business, including:

(a) all tangible personal property of Sellers, including without limitation all machinery, equipment (including, without limitation, telecommunications equipment, computer equipment, routers, switches, concentrators, peripherals and related hardware) (“**Equipment**”),

furniture, fixtures, leasehold improvements and all other fixed or tangible assets owned or leased under assumed Contracts, including, without limitation, those items described on Schedule 2.1(a) (collectively, the “Personal Property”), except those items to be retained by Sellers pursuant to Section 2.2 hereto;

(b) all real property leases and subleases as set forth in Schedule 2.1(b) (the “Real Property Leases”);

(c) all of Sellers’ rights in or under (i) all contracts with customers, and all software licenses, including without limitation those listed on Schedule 2.1(c)(i) and (ii) all telecommunication circuit contracts, and call contracts with vendors, software developers and others and the equipment leases listed on Schedule 2.1(c)(ii) (collectively, the “Contracts”) and all claims and causes of action thereunder, provided that any contracts with customers not listed on Schedule 2.1(c)(i) shall be deemed included on that Schedule, unless specifically listed as excluded on Schedule 2.2(e);

(d) all of Sellers’ rights in and to security and vendor deposits, prepayments and refunds existing with respect to the assumed and assigned Real Property Leases and Contracts, including, without limitation, those listed on Schedule 2.1(d);

(e) all of Sellers’ intellectual property and intangible property, including without limitation all of Sellers’ (1) trademarks, service marks, brand names, certification marks, collective marks, d/b/a’s, domain names, logos, symbols, trade dress, product configurations, assumed names, fictitious names, Internet protocol addresses, trade names, indicia of origin, all applications and registrations for all of the foregoing, together with all goodwill associated with any of the foregoing and symbolized thereby, including all extensions, modifications and renewals or same; (2) inventions, discoveries and ideas, whether patentable or not, and all patents, registrations and applications therefore, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (3) confidential and proprietary information, trade secrets and know-how relating to the Business, including processes, schematics, databases, customer and other resource lists, formulae, drawings, prototypes, models, designs, and any confidential, secret or proprietary aspects of the Business, including, without limitation, marketing information, pricing arrangements with customers and suppliers or financial information relating to the Business; (4) all proprietary computer software of Sellers, including, without limitation, all computer programs, object code, source code, user interface, databases and documentation; (5) rights in works of authorship, including databases and other compilations of information; and (6) other intellectual property or proprietary rights owned by Sellers including without limitation those utilized in, developed in connection with or material to the Business, including without limitation any of the foregoing listed on Schedule 2.1(e) (collectively, the “Intellectual Property”) and all Contracts pursuant to which any Seller is granted a license to, or any rights under, any Intellectual Property of any third Person and all Contracts pursuant to which any Seller grants to a third Person a license to, or any rights under, any Intellectual Property;

(f) all rights of setoff and recoupment with respect to the Assumed Liabilities;

(g) all actions under 11 U.S.C. Sections 544 through 550 (except as are specifically retained by the Sellers under Schedule 2.2(f)), and all counterclaims, offsets, defenses and denials against claims of creditors, and all rights and claims of Sellers, whether known or unknown, absolute or contingent, matured or unmatured, or otherwise, against third parties whether in tort, contract or otherwise, other than those relating to or arising under the Contracts (except with respect to all matters referred to in this subsection (g), to the extent necessary to setoff against claims of Creditors or to recover claims for damages against Sellers' estates, as set forth on Schedule 2.1(g), provided that such exception does not extend to actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business, and designated by Buyer prior to the Closing. No actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer's written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv)).

(h) all accounts receivable, trade accounts and other amounts owed to any of the Sellers relating to, or arising in connection with the operation and conduct of, the Business (including overdue accounts receivable and all accounts receivable that have been billed by Sellers in advance for services or products that have not yet been provided prior to the Closing Date) and any other rights of any of the Sellers to payment from any other Seller, any subsidiary of any Seller or any third party and the full benefit of all security for such accounts or rights to payment, including, together with any and all proceeds of any of the foregoing (collectively, the "Accounts Receivable");

(i) all cash and cash equivalents whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts and including any cash collateral that is collateralizing any letters of credit, or obligation with respect thereto, assumed by the Buyer, but excluding any cash tendered as part of the Purchase Price, including all net operating income (in whatever form) to the extent not used in accordance with final orders entered by the Bankruptcy Court or in accordance with the DIP Facility Budget, prior to the Closing;

(j) at the option of Buyer, in its sole discretion, all Shares, including, without limitation, all shares of the capital stock of Magenta, whether or not an this Agreement is effected through an Alternative Transaction;

(k) all of Sellers' books of account, records, files (including those relating to customers and carriers), customer lists, invoices and similar financial books, records and information, employment records and files, and Sellers' engineering and other technical books, papers, files and records (including all data and other information stored on discs, tapes, including back up tapes, or other media) relating to the Business, provided that Sellers shall have the right to make copies of such books and records to the extent Sellers determine that they are necessary to enable Sellers to wind down Sellers' estates and/or are otherwise required for legal or regulatory reasons;

(l) all rights to enforce any and all agreements between Sellers and their respective employees relating to noncompetition, invention assignment, proprietary information and/or confidentiality; except that Seller shall retain any cause of action against any Employee for damages to the extent of loss or damage suffered by the Sellers or their estates on account of employee conduct occurring prior to the Closing Date;

(m) all other rights of Sellers relating to the Business, including, without limitation, all goodwill relating to the Business;

(n) all Permits and licenses, other than non-transferrable Permits and licenses which are not material to the Business as determined and approved by Buyer in its sole discretion;

(o) all telephone, fax numbers, carrier identification codes, other than those not transferable which are not material to the Business as determined and approved by Buyer in its sole discretion;

(p) all websites;

(q) all rights under warranties relating to the Purchased Assets; and

(r) all proceeds of insurance arising from damage to, destruction of or loss relating to the Purchased Assets or covering claims, if any, for which Buyer may have successor liability, provided, however, with respect to any successor liability claims, such proceeds shall be used solely either to satisfy such liability directly or, if Buyer or the Sellers have already satisfied such a claim, to reimburse Buyer or the Sellers to the extent of such satisfaction.

(In the event of an Alternative Transaction, the enumeration of items in 2.1(a)-(r) above shall, with respect to any entity whose Shares are being acquired, refer to such entity's right, title or interest therein, it being the intent that Buyer shall acquire such assets indirectly through the purchase of such Shares.)

Notwithstanding anything to the contrary contained herein, (x) Sellers may at any time up to the date of the Sale Hearing, supplement Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, to add any contract or lease that was not previously listed thereon, in which case such contract or lease shall be, subject to the consent of Buyer in its sole discretion, as applicable, a Purchased Asset, or (y) Buyer may, in its sole discretion, at any time prior to the Closing remove from Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, any contract or lease listed thereon, in which case such contract or lease shall be an Excluded Asset. In the case of any contract or lease the existence of which was not disclosed to Buyer in reasonable detail prior to the date hereof (an "Undisclosed Contract"), Buyer may add such Undisclosed Contract to Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, at any time prior to the date of the Sale Hearing, and Sellers shall take all actions desirable or necessary including filing any necessary or desirable motions or applications and obtaining any appropriate Orders from the Bankruptcy Court, in order to effectuate the assignment of such Undisclosed Contract to Buyer. It is the intention of the parties that all assets of Sellers other than Excluded Assets are to be included in the sale hereunder. Accordingly, if any asset of

Sellers, which is not an Excluded Asset, is not transferred to Buyer at Closing, in the sole discretion of Buyer, Sellers shall cause it to be transferred to Buyer for no additional consideration, subject to Bankruptcy Court approval including any requirement to pay any Cure Amount (which Cure Amount shall be paid by Buyer if Buyer elects to acquire such asset but without any increase in the Purchase Price, unless Buyer determines, in its sole discretion, to increase the Purchase Price therefor), including assuming and assigning any executory contracts and unexpired leases. At Buyer's option, Sellers shall cause, prior to the Closing Date, any or all assets of Magenta to be transferred to Sellers by Magenta.

2.2 **Excluded Assets.** Any provision herein to the contrary notwithstanding, the Purchased Assets shall not include any of the following assets (the "Excluded Assets"):

- (a) the Purchase Price;
- (b) at the option of Buyer, in its sole discretion, any and all Shares of the capital stock or any equity interest of any of the Sellers or any of their subsidiaries;
- (c) any: (i) confidential personnel and medical records pertaining to any Employee to the extent such records may not be transferred to Buyer pursuant to applicable Law; (ii) other books and records that the Sellers are required by Law to retain including, without limitation, Tax Returns, taxpayer and other identification numbers, financial statements and corporate or other entity filings provided, that Buyer shall have the right to make copies of any portions of such retained books and records to the extent that such portions relate to the Business or any of the Purchased Assets; (iii) any information management systems of the Sellers, other than those used in or useful in connection with or related to the Business; and (iv) (except in the event of an Alternative Transaction) minute books, stock ledgers, equity books, equity ledgers, equity certificates and stock certificates of any Seller or any of its Subsidiaries which do not constitute Purchased Assets; in each case (i)-(iv) above, subject to Buyer's ability to make copies thereof as Buyer deems necessary and proper;
- (d) assets of any Employee Plan, which shall be terminated or disposed of prior to the Closing if an Alternative Transaction is implemented;
- (e) those assets described on Schedule 2.2(e), and any Contracts and Real Property Leases not listed on Schedule 2.1(b), 2.1(c)(ii) as specifically assumed, all of which assets shall be terminated or disposed of prior to the Closing if an Alternative Transaction is implemented; Buyer may, in its sole discretion, at any time prior to Closing, move Personal Property, Real Property Leases and Contracts from Schedules 2.1(a), 2.1(b) and 2.1(c)(i) and (ii) to Schedule 2.2(e) after further due diligence; provided, however, that so moving any Personal Property, Real Property Leases or Contracts shall not result in any reduction of the Purchase Price; and
- (f) the Retained Causes of Action set forth on Schedule 2.2(f), subject to the restrictions in Section 2.1(g).

2.3 **Assumed Liabilities.** Upon the terms and subject to the conditions of this Agreement, effective as of the Closing Date, Buyer shall assume and agree to discharge the following, and only the following, Liabilities of Sellers (the "Assumed Liabilities"):

(a) all Liabilities relating to the operation of the Business acquired hereunder that arise from events, facts or circumstances that occur on or after the Closing;

(b) all of Sellers' obligations under the Contracts and the Real Property Leases acquired hereunder and obligations to pay Taxes of Governmental Units, which accrue after the Closing

(c) all of Sellers' (a) accounts payable and other obligations under the Contracts and the Real Property Leases assumed and assigned hereunder and (b) obligations to pay Taxes of Governmental Units, in each case that are current, accrued and unbilled obligations incurred postpetition, which Buyer will pay when invoiced and due in the ordinary course after Closing;

(d) all amounts payable under Section 365 of the Bankruptcy Code to cure monetary defaults under the Contracts and the Real Property Leases acquired hereunder in accordance with the Assignment Notices described in Section 7.3 herein between Sellers and the counterparty to such Contracts and Real Property Leases or as otherwise provided in an Order of the Bankruptcy Court, to the extent not previously paid by Seller as an Administrative Expense; provided, however, that Buyer's assumption of each Contract and each Real Property Lease is predicated upon the Cure Amount not exceeding the amount set forth on Schedule 2.3(c) (the "Cure Schedule") or such greater amount as the Bankruptcy Court shall determine is the Cure Amount for each Contract and Real Property Lease to be assumed by Buyer in accordance with such Assignment Notice, subject to Buyer's right to reject any of such Contracts or Real Property Leases prior to the Closing Date and further subject to Buyer's ability, in its sole discretion, to increase the Purchase Price for any additional Cure Amount which may be required prior to the Closing Date (collectively, the "Cure Amount").

For the avoidance of doubt, the parties agree that (i) the portion of the Cure Amount payable on the Closing Date shall be paid by the Sellers as an Administrative Expense (but separately allocated outside the aggregate Administrative Expense limit in the Purchase Price), using part of the Closing Cash Payment at Closing and first using any funds deemed not to collateralize the Pre-Petition Facility, (ii) Buyer's assumption of the Assumed Liabilities shall be without duplication of the expenses paid by Buyer as Pre-Closing Costs or otherwise advanced as part of the Sale Facility or DIP Facility, and (iii) any Closing Cash Payments shall be without duplication of amounts advanced as part of the DIP Facility.

2.4 **Excluded Liabilities.** Notwithstanding anything to the contrary contained in this Agreement or otherwise, Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of Sellers, direct or indirect, known or unknown, absolute or contingent, not expressly assumed by Buyer pursuant to Section 2.3 (all such liabilities and obligations not being assumed being herein called the "Excluded Liabilities"). Without limiting the generality of the foregoing, all of the following shall be Excluded Liabilities for purposes of this Agreement:

(a) all Liabilities of the Sellers relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets;

(b) all accounts payable arising from the Business (including without limitation those arising under Contracts and Real Property Leases) which accrue or arise prior to the Closing Date and which remain unpaid on the Closing Date, except insofar as they are within 2.3(c);

(c) claims of Creditors not expressly assumed hereunder;

(d) all Liabilities with respect to all Employee Plans, policies, agreements and arrangements of the Sellers and their Affiliates, including all Employee Plans, and any Liability to or in respect of, or arising out of or in connection with, the employment by any of the Sellers or cessation of employment with any of the Sellers of any Employees or independent contractors or former employees or independent contractors of any of the Sellers, including any severance obligations that arise on or prior to the Closing Date and any WARN liability associated with the termination of Employees;

(e) any and all federal or state regulatory charges or assessments in respect of operations of Sellers prior to the Closing Date, including but not limited to all universal service fund charges, federal excise taxes, FCC charges for network access, local number portability charges, telecommunications relay service charges, local communications taxes, state gross receipts taxes, state utility privilege taxes and 911 fees, other than those paid by the allocation to Priority Claims of a portion of the Purchase Price;

(f) all Taxes payable or that become payable by Sellers arising from the conduct of the Business prior to the Closing Date other than those paid by the allocation to Priority Claims of a portion of the Purchase Price (which shall encompass Taxes incurred postpetition in the course of operation of the Business, for purposes of this Agreement). All sales Taxes and universal service charges collected by Buyer attributable to a sale that occurred prior to the Closing Date shall be remitted to the appropriate Taxing Authority or universal service administrative company for credit to Sellers' account;

(g) any debt of the Sellers, except to the extent otherwise expressly included in Assumed Liabilities;

(h) any Claim or Interest or any kind or nature in any of the Shares;

(i) any liabilities or obligations of Sellers arising prior to the Closing Date, except as expressly assumed by Buyer in writing, including any obligations to any holders of Claims and/or Interests in the Sellers or affiliates thereof.

(In the event of an Alternative Transaction, the enumeration of items in 2.4(a)-(i) above shall, with respect to any entity whose Shares are being acquired, refer to such entity's liabilities and shall require the termination of such liabilities as a condition of Closing, it being the intent that Buyer shall acquire such Shares of such entity only if such liabilities of such entity have been discharged or otherwise disposed of.)

For the avoidance of doubt, amounts paid by Buyer on behalf of the Existing DIP Payment Amounts, Pre Closing Expenses, Administrative Expense Claims including Professional Fees, and Priority Claims at Closing shall be in the nature of payment of the

Purchase Price and shall be allocated by Sellers as set forth in the Plan, with Administrative Expense Claims and the Cure Amount first using any funds deemed not to collateralize the Pre-Petition Facility. No presumption shall arise as to the assumption by Buyer of any liabilities related to any of Administrative Expense Claims including Professional Fees or Priority Claims by virtue of payments of amounts allocated by Sellers to such categories.

2.5 **Non-Transferred Assets.**

(a) Notwithstanding anything in this Agreement to the contrary, the parties agree that, to the extent that as of the Closing certain of the Purchased Assets cannot be transferred to Buyer (i) pending Buyer obtaining the requisite telecommunications regulatory authorizations from State and Federal regulatory agencies and/or consent of State and Federal regulatory agencies to the transfer of such Purchased Assets or (ii) if an attempted assignment of any Contract or Real Property Lease, without the consent of any other Person that is a party thereto, would constitute a breach thereof or in any way negatively affect the rights of Buyer (unless the restrictions on assignment would be rendered ineffective pursuant to sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended), as the assignee of such Contract or Real Property Lease, as the case may be, thereunder (or, in the event of an Alternative Transaction, if the acquisition by Buyer of any Shares or other equity interests of Company or one or more subsidiaries is not consummated because certain Transferred Assets cannot be owned by Buyer or by entities whose Shares or other equity interests are owned by Buyer), Sellers shall retain title to such assets (the “Non-Transferred Assets”) and any Assumed Liabilities related to such assets, pending receipt of such authorizations and consents, and shall hold and treat such assets in accordance with the terms set forth in a management agreement to be agreed upon between Buyer and Sellers. Upon receipt from time to time of any such necessary consents, such Non-Transferred Assets as are subject to the consents so received, shall be transferred to Buyer pursuant to subsection 2.5(b) below, and Buyer shall assume all related Assumed Liabilities (or, in the event of an Alternative Transaction, the applicable Shares or other equity interests of the Company or one or more of its subsidiaries shall be transferred to Buyer or otherwise caused to be acquired by Buyer by direct purchase of such equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state).

(b) Subject to and in accordance with the terms and conditions of this Agreement and without limiting the obligations of the parties, it is hereby acknowledged, confirmed and agreed by the parties that each of the parties will execute, deliver, or cause to be delivered the Non-Transferred Asset Documents upon receipt of the consents and approvals, if any, referred to in clauses 2.5(a)(i) and 2.5(a)(ii) above. Upon delivery of such duly executed Non-Transferred Asset Documents, the requirements of Article XI below shall be deemed to be satisfied as if such Non-Transferred Assets and related Assumed Liabilities had been transferred to and assumed by Buyer at the Closing, and the Purchase Price will not be affected by Non-Transferred Assets.

2.6 **Prorations at Closing.** All items of income, expense, charges, fees and costs covered by this Agreement, to the extent earned, incurred or accrued for a period that starts before

and ends after the Closing Date, shall be pro-rated as of the Closing Date with Sellers receiving or responsible for the pro-rated amount for the period before the Closing Date and Buyer receiving or responsible for the pro-rated amount from and after the Closing Date. Such pro-rated amounts shall be determined at Closing or, if it is not possible to calculate them at that time because of insufficient information, promptly after such information becomes available. To the extent that either party requests a post-closing reconciliation of pro-rations at Closing, such reconciliation shall be made within 45 days after Closing.

2.7 **Sellers' Access to Records and Personnel.** Sellers, so long as any of them remain a debtor in a case under any chapter of the Bankruptcy Code, shall, at reasonable times and on reasonable notice, have access to all records and Transferred Employees for all actions that are reasonably necessary or reasonably proper to administer such case under the Bankruptcy Code.

ARTICLE III **PURCHASE PRICE**

3.1 **Purchase Price.**

(a) Each of the parties hereby acknowledges, confirms and agrees that the Debtors have incurred indebtedness under the DIP Facility.

(i) Buyer agrees that from subject to the terms and conditions of the DIP Facility, it will continue to fund the DIP Facility following entry of the Sale Order to the Closing Date as agreed by Buyer and Seller in the DIP Facility Budget.

(ii) Buyer shall satisfy the Existing DIP Payment Amounts on the Closing Date from the Sale Facility; provided, however that the Existing DIP Payment Amounts may be satisfied by Buyer's assumption and continued funding of the DIP Facility as part of the Sale Facility, continuing in effect all of Buyer's right, title and interests in the DIP Facility, and the Collateral for the DIP Facility.

(b) The purchase price for the Purchased Assets (the "Purchase Price") shall be an amount not to exceed \$28,643,000 (plus assumption of Assumed Liabilities), as follows:

(i) An amount equal to the Sale Facility, which will fund

(A) The Existing DIP Payment Amounts in the estimated amount of \$10,583,000

(B) An amount not to exceed \$9,060,000 consisting of the sum of the following (w) Cure Amounts (estimated at \$6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders), plus (x) Priority Claims (estimated at \$706,000), plus (y) \$1,500,000 for the Fee Payment Cap;

(C) Credit bid of \$9,000,000 of the Pre-Petition Facility, which Buyer may assume and satisfy post-Closing, in its sole discretion;

(ii) plus assumption of the Assumed Liabilities.

(c) Not later than one (1) Business Day prior to the Closing Date, the Sellers and Buyer shall cooperatively prepare a closing statement consisting of (i) the amount necessary to pay off amounts drawn on the DIP Payment Amounts; (ii) amounts attributable to the Cure Amount to be paid on the Effective Date pursuant to the Confirmation Order from an additional draw on the Sale Facility (which statement shall set forth in reasonable detail the basis for the calculation of the Cure Amount); (iii) amounts necessary to fund the Fee Payment Cap components not previously paid by the DIP Facility or Sale Facility (for the avoidance of doubt, advances by Purchaser in its discretion from the Sale Facility to satisfy amounts within the Fee Payment Cap reduce, dollar for dollar, the Sale Facility and the total amount that will be funded on the Closing for the Fee Payment Cap), amounts attributable to Priority Claims, amounts due under the Wind Down Budget (to the extent not previously paid by the DIP Facility), all to be satisfied from an additional draw on the Sale Facility. Under no circumstances shall the foregoing exceed, on an aggregate basis, the remaining Purchase Price; provided however, that all Administrative Expense Claims (as defined in the Plan) and all other claims and liabilities of Seller not expressly assumed by Buyer shall have been paid, satisfied or discharged by the Plan and the Confirmation Order, with Administrative Expense Claims along with the Cure Amount first satisfied by using any funds deemed not to collateralize the Pre-Petition Facility.

(d) At the Closing, the Purchase Price shall be payable,

(i) with respect to the DIP Facility, in the form of a credit in an amount equal to Sellers' obligations under the DIP Facility, in accordance with § 363(k) of the Bankruptcy Code (the "Credit Bid"), or by assumption of the DIP Payment Amounts by Buyer;

(ii) with respect to amounts attributable to the Cure Amount, the Administrative Expense Claims (if any) including Professional Fees, the Priority Claims, and the Wind Down Budget in cash (to the extent not previously paid by the Debtors using DIP Facility financing and operating income under the DIP Budget, and the Purchase Price and amount available under the Fee Payment Cap is reduced to the extent of such a payment) by advances from the Sale Facility; and

(iii) with respect to the amount of the Assumed Liabilities described in Section 2.3, by assuming such Assumed Liabilities through a duly executed assignment and assumption agreement reasonably agreed to by Buyer and Sellers (the "Assignment and Assumption Agreement") or such other instrument(s) of conveyance and transfer, in form and substance reasonably acceptable to Sellers, as may be necessary to convey the Purchased Assets to Buyer (which, in the event of an Alternative Transaction, shall acknowledge that the Assumed Liabilities of any entity whose Shares are being acquired remain liabilities of such entity and are not being directly assumed by Buyer).

(e) Amounts necessary to fund estimated draws under the Sale Facility shall be funded by Buyer on the Closing Date.

ARTICLE IV **CLOSING**

4.1 **Closing Date.** Subject to the satisfaction of the conditions set forth in Article XI hereof (or the waiver thereof by the party entitled to waive that condition) and subject to Buyer's right to terminate this Agreement pursuant to Section 7.5; the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities, including through the Alternative Transaction provided for in Article II hereof, if applicable (collectively, the "Closing") shall take place at 10:00 a.m. (Phoenix time) on the Business Day selected by Buyer occurring as soon as practicable after satisfaction or waiver of the conditions set forth in Article XI; provided that (i) the Closing will not be delayed until the Regulatory Approval Date if all Regulatory Approvals have been obtained and all other conditions to Closing have been satisfied prior to that date, but shall occur as soon as all conditions to Closing are met, and (ii) the Closing Date shall be no later than the Regulatory Approval Date. Buyer may decide, in its sole and absolute discretion, to proceed with the Closing prior to a Plan Effective Date.

The Closing shall take place at the offices of Lewis and Roca, LLP (or at such other place as the parties may designate in writing). The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date."

4.2 **Closing Deliveries.**

- (a) **Sellers' Deliveries.** At the Closing, the Sellers shall deliver to Buyer:
- (i) If an Alternative Transaction is implemented, execution of any and all documents necessary to effectuate the acquisition of Shares and/or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, including without limitation an assignment of certificate of stock or other equity interest, articles of redomestication or conversion or merger or share exchange or any other documents required to be filed by any state having jurisdiction over the entities who are parties to an Alternative Transaction or formed or to be formed in connection with an Alternative Transaction;

- (i) bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of all of Sellers' right, title and interest in the Purchased Assets to Buyer, duly executed by the Sellers;
- (ii) all original books and records, including, without limitation, originals of any title documents related to the Purchased Assets and originals of any of the Purchased Assets, including contracts, real property leases, Intellectual Property and Permits and any and all passwords, user names, log ins and similar codes related to any of the Purchased Assets;
- (iii) a duly executed Assignment and Assumption Agreement;
- (iv) an assignment and assumption of each Real Property Lease (collectively, the "Lease Assignments"), duly executed by the applicable Seller that holds the leasehold interest in such Real Property Lease;
- (v) duly executed assignments of (i) the patents and trademarks that are included in Intellectual Property (if applicable), in forms suitable for recording in the United States Patent and Trademark Office, and (ii) duly executed assignments of the copyright registrations and applications for copyright registration owned by the Seller that are included in Intellectual Property (if applicable);
- (vi) duly executed assignments, in form and substance acceptable to Buyer, of any Contract relating to licensed Intellectual Property;
- (vii) the Executive Officer's certificate required to be delivered pursuant to and certifying to the matters set forth in Section 11.1(a) and Section 11.1(b), in form and substance satisfactory to Buyer;
- (viii) an executed management agreement, if applicable;
- (ix) a copy of all orders entered by the Bankruptcy Court pertaining to the transactions contemplated herein, including the Sale Order and, if applicable, the Confirmation Order;
- (x) all consents obtained, and all notices to third parties given, by the Sellers as of the Closing Date regarding the transfer of the Purchased Assets;
- (xi) final copies of the Schedules hereto;

- (xii) certified resolutions from the board of directors of each of the Sellers approving and authorizing this Agreement and the transactions contemplated herein;
 - (xiii) an affidavit of non-foreign status meeting the requirements of Section 1445(b)(2) of the Code; and
 - (xiv) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer.
- (b) Buyer's Deliveries. At the Closing, Buyer shall:
- (i) advance additional amounts as necessary from the Sale Facility to meet Closing obligations including Closing Cash Payments;
 - (ii) if an Alternative Transaction is implemented, execution of any and all documents necessary to effectuate the acquisition of Shares and/or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, including without limitation a subscription for purchase of stock or other equity interest, an acceptance of assignment of certificate of stock or other equity interest
 - (iii) execute and deliver to Sellers the Assignment and Assumption Agreement;
 - (iv) execute and deliver to Sellers the Lease Assignments; and
 - (v) deliver an officer's certificate, duly executed by a senior officer of the Buyer, certifying to the matters set forth in Section 11.2(a) and Section 11.2(b), in form and substance satisfactory to the Seller.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers (for purposes of this Agreement, including Articles V

and VII herein, the term “Sellers” expressly includes each Seller and each such Seller’s direct and indirect subsidiaries) represent and warrant to Buyer and agree as follows:

5.1 **Organization of Sellers.** Except as set forth on Schedule 5.1, each Seller is a corporation or limited liability company duly organized, validly existing and in good standing under the Laws of its respective state of formation as identified on Schedule 5.1, and subject to the authority of the Bankruptcy Court each Seller has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted, except for any failure to be in good standing or to have requisite power and authority that in the aggregate could not reasonably be expected to result in a Material Adverse Change. Schedule 5.1 identifies the only jurisdictions in which the ownership, use or leasing of each Sellers assets and properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for those jurisdictions in which the adverse effects of all such failures by such Seller to be qualified, licensed or admitted and in good standing could not in the aggregate reasonably be expected to result in a Material Adverse Change, and Schedule 11.1(h)(i) sets forth all jurisdictions in which qualification, licensing or other regulatory approvals are to be filed or obtained by Sellers.

5.2 **Authority of Sellers.** Each Seller has, upon entry of the Sale Order and Bankruptcy Court approval, all requisite power and authority to execute and deliver this Agreement and each Seller has, upon entry of the Sale Order and Bankruptcy Court approval, all requisite power and authority to execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by such Seller in connection with the consummation of the transactions contemplated by this Agreement (the “Sellers Documents”), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Sellers Documents and the consummation of the transactions contemplated hereby and thereby will be duly authorized by all requisite action on the part of each Seller prior to the Closing. This Agreement has been, and each of the Sellers Documents will be at or prior to the Closing, duly executed and delivered by each Seller which is a party thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order) this Agreement constitutes, and each of the Sellers Documents when so executed and delivered will constitute, legal, valid and binding obligations of each Seller, enforceable against the Sellers in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 **Conflicts; Consents of Third Parties.**

(a) Except as set forth on Schedule 5.3(a), none of the execution and delivery by the Sellers of this Agreement or the Sellers Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by the Sellers with any of the provisions hereof or thereof will conflict with, or result in any breach, violation of or default (with or without notice or lapse of time, or both) under, result in the creation of any Encumbrance, or give rise to a right of acceleration, termination or cancellation under any provision of: (i) the certificate of

incorporation and bylaws or comparable organizational documents of the Sellers; (ii) subject to entry of the Sale Order, any Contract or material Permit to which any Seller is a party or by which any of the properties or assets of Sellers are bound; or (iii) subject to entry of the Sale Order, any applicable Law.

(b) Except as set forth on Schedule 5.3(b) and subject to entry of the Sale Order, no material consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any other Person or Governmental Body (other than the Bankruptcy Court) is required on the part of any Seller in connection with the execution and delivery of this Agreement or the Sellers Documents, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or the taking by any Seller of any other action contemplated hereby. No other filings or regulatory approvals are necessary for the Operation of the Business, other than those listed on Schedule 11.1(h)(ii).

5.4 **Title to Assets; Sufficiency of Assets.** The Sellers are the owners of the Purchased Assets existing as of the date hereof, provided, however, that with respect to an Alternative Transaction, Sellers are not owners of the Shares, but are entitled under the Plan and Bankruptcy Court orders to effect a transfer of the Shares to Buyer, by direct purchase of the Shares, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state.. The Sellers have good, valid and marketable title to the Purchased Assets, except, in the event of an Alternative Transaction, with respect to the Shares, which the Sellers nonetheless are authorized to transfer. Subject to the entry of the Sale Order, and provided such order has not been stayed, modified, vacated or reversed, upon the Closing, Buyer shall acquire all of each Seller's right, title and interest in the Purchased Assets, free and clear of all Encumbrances, Claims and Interests. The Purchased Assets (including without limitation the computer software and Magenta assets), whether transferred directly or transferred indirectly through an Alternative Transaction, are sufficient to conduct the Business substantially as presently conducted.

5.5 **Real Property.**

(a) No Seller owns any real property.

(b) With respect to the Real Property Leases:

(i) The Sellers have made available to Buyer accurate and complete copies of (x) the Real Property Leases under which any Seller holds a leasehold interest in each leased real property, together with any amendments, modifications and assignments of such Real Property Leases, and (y) all overleases in the possession or control of Sellers with respect to the Real Property Leases referred to in clause (x) above; and

(ii) The Sellers own the Real Property Leases and the leasehold interests created thereby, free and clear of all Encumbrances except for Permitted Encumbrances.

(c) The Sellers believe in good faith, after due investigation and inquiry, that the Cure Amount and Cure Schedule for payment thereof set forth on Schedule 2.3(c) with respect to the Real Property Leases is true and correct in all material respects. No monetary defaults exist under any Real Property Leases other than the monetary defaults required to be cured pursuant to Section 365 of the Bankruptcy Code and listed on Schedule 2.3(c). To the Knowledge of Sellers, no non-monetary defaults exist under any Real Property Leases other than the non-monetary defaults listed on Schedule 5.5(c).

(d) Upon Buyer's acquisition of the Purchased Assets, Buyer will be able to operate the Real Property Leases in substantially the same manner as operated by the Sellers without violating any applicable zoning, use, subdivision or similar law.

(e) To the Knowledge of Sellers, no Seller has received written notice that any of the improvements located on the Real Property Leases are not presently used and operated in compliance with all material covenants, easements and restrictions affecting such Real Property Leases.

(f) Except as indicated on Schedule 5.5(f), the Real Property Leases comprise all of the real property used or occupied in the operation of the Business.

5.6 **Intellectual Property.**

(a) Except as set forth on Schedule 5.6(a), to the best of Sellers' Knowledge: (i) with respect to any Intellectual Property owned by Sellers (as opposed to Intellectual Property of which Sellers are a licensee), Sellers have all right, title and interest to all Intellectual Property, without any conflict with the rights of others, (ii) no Person other than the Sellers has the right to use the Intellectual Property owned by the Sellers, (iii) the Sellers have the valid right to use, pursuant to a license, sublicense or other agreement, any Intellectual Property used in the Business that is owned by a party other than the Sellers, and (iv) Sellers' use of Intellectual Property owned by others does not conflict with the rights of others.

(b) To the Knowledge of Sellers, set forth on Schedule 2.1(e) are all items of Intellectual Property used or useful in connection with or related to the Business. Except as set forth on Schedule 5.6(b), the Sellers have not granted any sublicense or similar right with respect to the Intellectual Property.

(c) With respect to each item that is required to be identified on Schedule 2.1(e) and except as otherwise set forth on Schedule 5.6(c), (i) at the Closing, to the Knowledge of Sellers, Buyer shall hold sole and exclusive rights to all such Intellectual Property, and no other Person shall have existing or contingent rights to use such Intellectual Property except with respect to software that is licensed from unaffiliated third persons or to the extent of licenses granted by Sellers, (ii) Sellers own or possess sufficient rights in or to such item to assign to Buyer all rights of Sellers in such Intellectual Property, and (iii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the Knowledge of Sellers, is threatened, as of the date hereof, that challenges the legality, validity, enforceability, registrations, use, or ownership of the item.

5.7 **Contracts.**

(a) Schedule 2.1(c)(i) and (ii) sets forth a list, as of the date hereof, of all material Contracts to which each Seller is a party or by which it is bound and that are used in or related to the Business or the Purchased Assets. To the extent written, the Sellers have delivered or made available to Buyer true, correct and complete copies of all of the Contracts listed or required to be listed on Schedule 2.1(c)(i) and (ii), including all schedules, exhibits, annexes, amendments, and modifications relating thereto.

(b) Except as set forth on Schedule 5.7(b), each material Contract is a valid and binding agreement of such Seller, and is in full force and effect, no Seller or, to the Knowledge of Sellers, any other party thereto is in default or breach, and to the Knowledge of Sellers, no event or condition has occurred which after notice or with the lapse of time or both would constitute a default or breach, in any respect under the terms of any material Contract. No Seller has received any written notice of the intention of any party to terminate any material Contract or that any party considers any Seller to be in material breach or material default thereunder or in potential breach in a material respect or default thereunder.

(c) The Sellers reasonably believe in good faith, after due investigation and inquiry, that the amounts set forth on Schedule 2.3(c) with respect to the Contracts represent an accurate and complete statement of the amounts due and owing and unpaid in respect of monetary defaults under the Contracts (exclusive of any pecuniary loss, including legal fees and interest, that may be asserted to be due and owing on account of such defaults). No monetary defaults exist under any Contracts other than the monetary defaults required to be cured pursuant to Section 365 of the Bankruptcy Code and listed on Schedule 2.3(c). To the Knowledge of Sellers, no non-monetary defaults exist under any Contract other than the non-monetary defaults listed on Schedule 5.7(c).

5.8 **Employee Benefits.**

(a) Set forth on Schedule 5.8(a) is a complete and correct list of all “employee benefit plans” as defined by Section 3(3) of ERISA (whether or not subject thereto) and all employment, consulting, retention, deferred compensation, bonus or other incentive compensation, severance or termination pay, stock purchase, stock option and other equity compensation, and all other employee benefit plans, programs or arrangements of any kind that are or were sponsored, maintained or contributed to, or required to be contributed to, by any Seller or an entity which is (or at any relevant time was) a member of a “controlled group of corporations” with or under “common control” with any Seller as defined in Section 414(b) or (c) of the Code (an “ERISA Affiliate”) and which provides or has provided benefits to any current or former Employee or independent contractor of any Seller (collectively the “Employee Plans”). The Sellers have made available to Buyer copies of the documents comprising each Employee Plan.

(b) Except as otherwise provided in Schedule 5.8(b):

(i) (A) each Employee Plan has been operated and administered in all material respects in accordance with its terms and applicable Law, including but not limited to ERISA and the Code, (B) each Employee Plan that is intended to be “qualified” within the meaning of Section 401(a) of the Code has received a favorable

determination letter from the Internal Revenue Service as to the qualified status of the Employee Plan and, to the Knowledge of Sellers, nothing has occurred that could reasonably be expected to cause the revocation of such letter, (C) none of the Employee Plans is subject to Title IV of ERISA or Section 302 of ERISA or is a “multiemployer plan” within the meaning of Section 3(37) of ERISA, and (D) neither the Seller nor any ERISA Affiliate has incurred or could reasonably be expected to incur any liability under Title IV or Section 302 of ERISA;

(ii) none of the Employee Plans provides coverage for medical or death benefits beyond termination of service or retirement, other than pursuant to COBRA, or any similar state or local Law;

(iii) neither the execution and delivery of this Agreement or any of the ancillary agreements by any Seller, nor the consummation of the transactions contemplated hereby or thereby (either alone or contingent upon the occurrence of any additional or subsequent events) will result in forgiveness of indebtedness or the acceleration or creation of any rights of any Transferred Employee to compensation or benefits under any Employee Plan (including the acceleration of the accrual or vesting of any benefits under any Employee Plan or the acceleration or creation of any rights under any severance, parachute or change in control agreement or the right to receive any transaction bonus or other similar payment); and

(iv) each Employee Plan which provides for the payment of nonqualified deferred compensation under Section 409A of the Code has been operated at all times in good faith compliance with all applicable requirements of Section 409A of the Code and the regulations promulgated thereunder.

5.9 **Litigation**. Except for the Bankruptcy Cases or as set forth on Schedule 5.9, there are no Legal Proceedings pending, or to the Knowledge of Sellers threatened, against or affecting the Business, any Purchased Assets or any Transferred Employee, other than those Legal Proceedings relating to routine claims and those relating to claims covered by insurance.

5.10 **No Finder**. Except as set forth on Schedule 5.10, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for any Seller in connection with the transactions contemplated by this Agreement and no Person acting on behalf of any Seller is entitled to any fee or commission or like payment from Buyer in respect thereof.

5.11 **Environmental Matters**. To the Knowledge of Sellers: (a) the Purchased Assets are in material compliance with all applicable Laws, regulations, or other legal requirements relating to the protection of the environment or human health and safety as it relates to Hazardous Materials (“Environmental Laws”), (b) no Seller has received written notice of any investigation, suit, claim, action, or proceeding relating to or arising under Environmental Laws with respect to the Purchased Assets or the Business, nor are any of the same being threatened in writing against any Seller or any Real Property Lease, (c) no Seller has received any written notice of, or entered into, any obligation, order, settlement, judgment, injunction, or decree involving outstanding requirements relating to or arising under Environmental Laws and (d) there has been no release of any Hazardous Materials into the environment at, onto, or from any property leased by any Seller

that would reasonably be expected to result in material liability, costs or claims relating to any Environmental Law. To the Knowledge of Sellers, Sellers have obtained and maintain all Permits, licenses and other authorizations required under all applicable Environmental Laws to operate the Business as it is currently being operated at the real property leased by Sellers, and all such Permits, licenses and authorizations are in full force and effect.

5.12 **SEC Filings; Financial Statements.** Except as set forth on Schedule 5.12, the Company has filed or furnished all registration statements, reports, schedules and other documents required to be filed or furnished by it or any of the Sellers with the SEC since December 31, 2007 (collectively, including any amendments thereto, the “Company SEC Reports”). As of their respective filing dates (or, if amended, as of the date of such amendment), the Company SEC Reports were prepared in accordance with, and complied in all material respects with, the requirements of the Exchange Act and the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, and none of the Company SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a Company SEC Report filed subsequently (but prior to the date hereof). The Company has made available to Buyer complete and correct copies of all amendments and modifications effected prior to the date of this Agreement that have not yet been filed by the Company with the SEC but which are required to be filed. Each of the financial statements (including the related notes and schedules) of the Company included in, or incorporated by reference into, the Company SEC Reports (the “Financial Statements”) complies in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP (except, in the case of unaudited financial statements, as permitted by applicable rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and their consolidated results of operations for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes). The Sellers have no current intention to correct or restate, and to the Knowledge of the Sellers, there is not any basis to correct or restate any of the Financial Statements other than as set forth on Schedule 5.12. The Sellers have not had any disagreement with any of their auditors regarding material accounting matters or policies during any of its past three (3) full fiscal years or during the current fiscal year-to-date other than as set forth on Schedule 5.12.

5.13 **Undisclosed Liabilities.** Except (i) as disclosed in the Financial Statements and Bankruptcy Schedules or, (ii) for Liabilities incurred in the Ordinary Course of Business since June 30, 2010 and (iii) as disclosed on Schedule 5.13, to the Knowledge of Sellers, the Business does not have any liability of any nature, whether or not absolute, accrued, contingent or otherwise, that would be required to be disclosed on or in the Financial Statements pursuant to GAAP. All Liabilities of Magenta as of October 31, 2010 are also disclosed on Schedule 5.13.

5.14 **Compliance with Laws; Permits.** Each Seller (i) has complied with, is in compliance with and has operated the Business in compliance with all applicable Laws in all material respects, and (ii) holds all material Permits, concessions, grants, licenses, easements,

variances, exemptions, consents, orders, franchises, authorizations and approvals of all Governmental Bodies necessary for the lawful conduct of the Business, except for any non-compliance or non-possession that individually or in the aggregate could not reasonably be expected to result in a Material Adverse Change. No Seller has received any written notice or other written communication from any Governmental Body or other Person, other than as set forth on Schedule 5.17 with respect to Taxes, (i) asserting any violation of, or failure to comply with, any requirement of any Permit or (ii) notifying Seller of the non-renewal, revocation or withdrawal of any Permit. Seller is in material compliance with the terms of the Permits.

5.15 **Absence of Certain Changes**. Since the Petition Date:

- (a) there has not been any Material Adverse Change;
- (b) except as set forth on Schedule 5.15(b) or with respect to expenditures approved as part of the DIP Budget or otherwise by the Bankruptcy Court order, no Seller has paid, discharged or satisfied any material claim, liability or obligation (whether absolute, accrued, contingent or otherwise) outside the Ordinary Course of Business;
- (c) there has not been any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the Business or any Purchased Assets which has resulted in a Material Adverse Change;
- (d) except as set forth on Schedule 5.15(d), or with respect to the DIP Facility senior lien, no Seller has permitted or allowed any of the Purchased Assets (real, personal or mixed, tangible or intangible) to be subject to any Encumbrances which shall not be released as of the Closing Date, provided that Buyer may assume \$9,000,000 of Pre-Petition Facilities under Section 3.1(b)(1)(C);
- (e) no Seller has sold, transferred, or otherwise disposed of any material properties or assets (real, personal or mixed, tangible or intangible) outside the Ordinary Course of Business;
- (f) no Seller has waived or otherwise released any material causes of actions, lawsuits, judgments, claims and demands except in the Ordinary Course of Business;
- (g) no Seller has disposed of, abandoned or permitted to lapse any material rights to the use or registration of any Intellectual Property, or entered into any exclusive license with respect to any of the Intellectual Property, or disposed of or disclosed to any Person, other than representatives of Sellers, Buyer and the other participants, and their respective representatives, in the Auction to acquire the Business and the Purchased Assets pursuant to non-disclosure agreements, any trade secret, formula, process, know-how not theretofore a matter of public knowledge;
- (h) except as set forth on Schedule 5.15(h), there has not been any transaction or commitment made, or any contract or agreement entered into, by any Seller material to the Business, other than transactions and commitments in the Ordinary Course of Business consistent with past practices and those contemplated herein and other than approved by the Bankruptcy Court;

(i) except as set forth on Schedule 5.15(i), there has not been any (A) employment, retention, bonus, deferred compensation, severance, retirement or other similar agreement entered into with any Employee, consultant or director (or any amendment to any such existing agreement), (B) grant of any severance or termination pay to any Employee, consultant or director or (C) change in compensation or other benefits payable to any Employee, consultant or director pursuant to any severance or retirement plans or policies thereof, in each case other than in the Ordinary Course of Business; and

(j) no Seller has agreed, whether in writing or otherwise, to take any action described in this Section 5.15.

5.16 **Accounts Receivable**. All Accounts Receivable of the Business are reflected properly on the books relating to the Business, are to the Knowledge of Sellers, valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to (a) the reserve for bad debts set forth on the face of the Financial Statements as adjusted for operations and transactions through the Closing Date in accordance with the Ordinary Course of Business and (b) the asserted offsets set forth on Schedule 5.16.

5.17 **Tax Matters**. Except as set forth on Schedule 5.17:

(a) The Sellers have timely filed with the appropriate Tax Authorities all Tax Returns required to be filed with respect to the Purchased Assets and the income and operations of the Business. All such Tax Returns are true, complete, and correct in all material respects.

(b) The Sellers have duly paid in full all Taxes and as of the Closing Date, there will be no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the Purchased Assets.

(c) There is no audit or other matter in controversy with respect to any Taxes due and owing by any of the Sellers insofar as any such matter pertains to the Purchased Assets or the income and operations of the Business, and there is no Tax deficiency or claim assessed or, to the Knowledge of Sellers, proposed or threatened (whether orally or in writing) against any of the Sellers, insofar as any such deficiency or claim pertains to the Purchased Assets or the income and operations of the Business.

(d) The Sellers have withheld all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, stockholder, or other third party, and such withheld Taxes have either been duly paid to the proper Taxing Authority or set aside in accounts for such purpose.

(e) The Sellers have not waived any statutory period of limitations for the assessment of any Taxes relating to the Purchased Assets or the income and operations of the Business, or agreed to any extension of time with respect to an assessment or deficiency for such Taxes, other than in the case of any such waivers or extensions in respect of an assessment or deficiency of Tax the liability of which has been satisfied or settled.

(f) The Sellers are not foreign persons within the meaning of Section 1445 of the Code.

(g) Sellers shall separately provide to Buyer a list of all Priority Tax and Priority Non-Tax Claims unpaid as of the execution date of this Agreement.

5.18 **Labor Matters.**

(a) None of the Sellers is a party or subject to any labor agreement with respect to its Employees with any labor organization, union, group or association and the Sellers do not have any employee unions (nor any other similar labor or employee organizations) under local statutes, custom or practice. In the past two years, none of the Sellers has experienced any attempt by organized labor or its representatives to make any Seller conform to demands of organized labor relating to any Employees or to enter into a binding agreement with organized labor that would cover any Employee. There is no labor strike or labor disturbance pending or, to the Knowledge of Sellers, threatened against any Seller nor is any material grievance currently being asserted, and in the past two years no Seller has experienced a work stoppage or other labor difficulty, and is not and has not engaged in any unfair labor practice or been subject to any unfair labor practice complaint or related or successor employer application and no such complaints or applications are, to the Knowledge of Sellers, threatened.

(b) Except as set forth in Schedule 5.18, during the last year there has been no “mass layoff” or “plant closing” as defined by WARN in respect of any Seller, and none of the Sellers has been affected by any transactions or engaged in layoffs or employment terminations sufficient in number to trigger application of any state, local or foreign Law or regulation which is similar to WARN.

5.19 **Employment Matters.**

(a) Sellers shall separately provide to Buyer a list of all individuals, whether or not actively at work as of the date hereof, who are employed by any of the Sellers in connection with the Business and: (i) their department; (ii) their dates of hire; (iii) their annual salary equivalent; and Sellers represent and warrant that there are no non-standard bonus, commission or incentive plans or agreements for or with them; or outstanding loans or advances made by or to them; or verbal or written employment agreements which impacts or establishes the terms of employment of those persons, and that such list is accurate and complete as of the date indicated thereon (which date is the most recent date for which the information contained thereon is readily available to the Sellers as of the execution date of this Agreement). Correct and complete copies of all employment agreements have been delivered to Buyer.

(b) Schedule 5.19(b) contains a list of all independent contractors currently engaged by any Seller and: (i) their address; (ii) their payment arrangements; and (iii) a brief description of their jobs or projects currently in progress. Schedule 5.19(b) is accurate and complete as of the date indicated thereon (which date is the most recent date for which the information contained thereon is readily available to the Sellers). Correct and complete copies of all written agreements with such contractors have been delivered to Buyer.

(c) Except for any limitations of general application which may be imposed under applicable employment Laws or otherwise set forth on Schedule 5.19(c), and except for any employment agreements otherwise disclosed to Buyer, each of the Sellers has the right to terminate the employment of its Employees at will and to terminate the engagement of any of its independent contractors without payment to such Employee or independent contractor other than for services rendered through termination and without incurring any penalty or liability.

(d) To the Knowledge of Sellers, the Sellers are in compliance, in all material respects, with all Laws relating to employment practices. The Sellers have delivered to Buyer accurate and complete copies of all current employee manuals and handbooks, disclosure materials, policy statements and other materials prepared, disclosed or promulgated by any Seller at any time during the last three years relating to the employment of the current and former Employees of any Seller.

5.20 **Customers and Suppliers.** Schedule 5.20 sets forth a complete and correct list of the twenty largest customers and the twenty largest suppliers (each measured by dollar volume of sales and purchases as the case may be) of the Business as of and for each of the last two (2) calendar years, and the amount of such business done (by dollar volume of sales and purchases as the case may be) with each such customer or supplier as of and for each such year. No Seller has received any notice from any such customer or supplier that such customer or supplier has ceased, or will cease, to purchase or sell, as applicable, products or services to or from any Seller or will or intends to substantially reduce such purchases or sales, as applicable.

5.21 **No Outstanding Transactions.** Other than this Agreement, the Sellers are not bound by any agreement with respect to a possible sale, transfer or disposition of any of the Purchased Assets or the Shares.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Sellers and agrees as follows:

6.1 **Organization of Buyer.** Buyer is a newly formed corporation, duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted, except for any failure to be in good standing or to have requisite power and authority that in the aggregate could not reasonably be expected to result in a Material Adverse Change.

6.2 **Authority of Buyer.** Buyer has full power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated by this Agreement (the "Buyer Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Buyer Documents and the

consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on behalf of Buyer. This Agreement has been, and each Buyer Document will be at or prior to the Closing, duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Buyer Document when so executed and delivered will constitute, the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including, without limitation, principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 **Conflicts; Consents of Third Parties.**

(a) None of the execution and delivery by the Buyer of this Agreement or the Buyer Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Buyer with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Buyer, (ii) any contract or permit to which Buyer is a party or by which Buyer or its properties or assets are bound or (iii) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any other Person or Governmental Body is required on the part of Buyer in connection with the execution and delivery of this Agreement or the Buyer Documents, the compliance by Buyer with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby without any material delay, the performance by Buyer of their respective obligations hereunder, or the taking by Buyer of any other action contemplated hereby, or for Buyer to conduct the Business.

6.4 **No Finder.** Other than as listed on Schedule 5.10, no other Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from Buyer in respect thereof.

6.5 **No Representation.** Notwithstanding anything to the contrary herein, Buyer makes no representation or warranty as to the fair market value of the Purchased Assets being acquired hereunder.

6.6 **Solvency.** Buyer is solvent and will not be left insolvent or with an unreasonably small capital as a result of this transaction.

6.7 **Buyer's Investigation.** As of the Closing Date, Buyer will have conducted its due diligence investigation of Sellers, provided, however, that such investigation does not limit in any way the representations and warranties of the Sellers under this Agreement.

6.8 **Sufficiency of Funds.** Buyer has unencumbered cash on hand or credit or capital contribution arrangements with financially responsible third parties, or a combination thereof, in

an aggregate amount sufficient to enable it to pay the Purchase Price and all other amounts payable by it in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 **Bankruptcy Court Approvals.** Sellers have filed and served the Sale Motion pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, as applicable, and shall use all reasonable efforts and act in good faith to seek entry of an order in form and substance satisfactory to Buyer (the “Sale Order”), which among other things, authorizes the Sellers pursuant to (without limitation) Sections 363(b), 363(f), 363(k), 363(l) and 365(b) of the Bankruptcy Code to enter into and perform this Agreement and contains findings of fact and conclusions of law including (without limitation) those to the following effect: (i) that the Bankruptcy Court has core jurisdiction to enter the Sale Order; (ii) that due and proper notice of the motion for entry of the Sale Order was given to all parties entitled thereto; (iii) that the transactions contemplated by this Agreement are supported by the Sellers’ sound business judgment; (iv) that the transactions contemplated by this Agreement are in the best interests of the Sellers and their bankruptcy estates; (v) that the consideration to be received by Sellers under this Agreement is fair and reasonable; (vi) that predicates exist under one or more applicable subsections of Section 363(f) of the Bankruptcy Code to authorize a sale to Buyer of the Purchased Assets free and clear of interests of all parties in the Purchased Assets; (vii) that the Contracts and the Real Property Leases are executory contracts and unexpired leases; (viii) that the Purchased Assets are sold free and clear of all Encumbrances; (ix) that no third party consents are needed for closing other than consents from Governmental Bodies; (x) that Sellers are relieved of any future performance obligation under assigned Contracts and Real Property Leases pursuant to Section 365(k) of the Bankruptcy Code; (xi) that the Buyer is a good-faith purchaser entitled to the protections of Section 363(m); (xii) authorizing the assumption and assignment of the Contracts and Real Property Leases; (xiii) liquidating each default to be cured as a prerequisite to assumption or setting such default for hearing; (xiv) (A) directing that each liquidated default be cured within ten days after Closing by payment or provision for payment of a liquidated sum, tender of which shall constitute a complete satisfaction of all claims arising from defaults (both monetary and non-monetary), or (B) provision for segregating such sum to cure those defaults, following their liquidation as the Court may deem necessary to constitute adequate assurance of prompt cure of defaults, or (C) authorizing the curing of those defaults in such time and in such manner as may be agreed by the Buyer and the counterparty to such contract or lease; (xv) authorizing the parties to close; (xvi) over-ruling all objections to entry of the Sale Order; (xvii) reserving jurisdiction to construe and enforce the Sale Order; (xviii) providing that Buyer is not a successor in interest to Sellers or the business of Sellers with respect to all parties having notice of the sale; (xix) providing that Buyer shall not be liable for any pre- or post-petition debts of the Sellers other than with respect to payment of the Purchase Price as allocated among the Assumed Liabilities, Administrative Expense Claims including Fee Claims, Priority Claims and Wind Down Obligations as set forth in this Agreement; (xx) containing such other findings and provisions as may be reasonably requested by Buyer; (xxi) that any and all additional amounts advanced under the DIP Facility and Sale Facility shall be approved by the Court; (xxii) that all obligations of the Sellers under and with respect to the DIP Facility and Sale Facility will be

secured by, pursuant to sections 364(c)(2) and section 364(d)(1) of the Bankruptcy Code, a first priority lien senior to all prepetition and post petition liens and security interests of all prepetition and post petition lenders, and will also receive and be entitled, pursuant to Section 364(c)(1) of the Bankruptcy Code, to a super-priority administrative expense claim over all other costs and expenses of the kinds specified in, or ordered pursuant to, sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726 or any other provisions of the Bankruptcy Code; (xxiii) that all advances made pursuant to the DIP Facility and Sale Facility shall be deemed to be included in the Pivotal GC Indemnification and Reimbursement Claim (as defined in the DIP Order); (xxiv) that all obligations of the Sellers to any prepetition secured or unsecured lenders have been released or shall be released through the Confirmation Order as of the date thereof; (xxv) that the transfer of any assets from Magenta in consideration for release and extinguishment of intercompany notes is for fair value, if applicable; (xxvi) that Magenta has not received any prepetition or post-petition advances from any prepetition or post petition lender; (xvii) to the extent possible after exerting the best efforts of each of the parties, that the provisions of Bankruptcy Rules 6004(g) and 6006(d) shall not apply to the Sale Order; (xxviii) that the Buyer has not acted in a collusive manner with any Person and the Purchase Price was not controlled by any agreement among bidders; (xxix) that nothing contained in the Plan or any plan of reorganization or liquidation will alter, conflict with, or derogate from, the provisions of this Agreement, provided however, that if the Buyer elects to consummate this transaction under the Plan, the terms of the Plan shall be conformed to the extent that any provision of this Agreement is inconsistent therewith; and (xxx) in the event of an Alternative Transaction, (i) the transfer of the Shares to the Buyer pursuant to, and subject to the terms of, the Alternative Transaction shall constitute a legal, valid and effective transfer of the Shares, and shall, upon the consummation of the Closing, vest in the Buyer good and marketable title in and to the Shares, free and clear of all Interests, Claims, liens and Encumbrances of any kind or nature whatsoever, (ii) all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and other regulatory authorities, lenders, trade and other creditors holding any claims to the Shares, are forever barred and estopped from asserting against the Buyer, its successors or assigns (to the extent allowed by law), its property, its officers, directors and shareholders or the Shares, such persons' or entities' Claims and Interests, and (iii) all such Claims and Interests shall be unconditionally released and terminated as to the Shares.

7.2 **Cooperation.** Sellers and Buyer shall consult with one another regarding pleadings which either of them intends to file, or positions either of them intends to take before the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Sale Order, the Confirmation Order, the Sale Facility or this Agreement. Sellers shall promptly and reasonably provide Buyer and its counsel with all notices and communications received by Sellers relative to any of the transactions contemplated by this Agreement, provided that Sellers shall be entitled to maintain in confidence all communications to and from prospective buyers other than Buyer, except as required to make such communications public by the Bankruptcy Court.

7.3 **Seller Actions.** The Sellers shall use their commercially reasonable efforts to have the Bankruptcy Court schedule a hearing on the Sale Motion and Plan Confirmation as soon as possible so as to obtain entry by the Bankruptcy Court of the Sale Order and Confirmation Order by no later than February 1, 2011 (the "**Sale Hearing**"). The Sellers shall also use their commercially reasonable efforts to obtain any other approvals or consents from the Bankruptcy

Court that may be reasonably necessary to consummate the transactions contemplated in this Agreement. Furthermore, the Sellers shall serve on all counterparties to the Contracts and Real Property Leases that are to be transferred pursuant to Section 2.1(b) and 2.1(c)(i) to the extent not previously notified, a notice specifically stating that the Sellers are or may be seeking the assumption and assignment of such Contracts and Real Property Leases (“Assignment Notice”) and shall notify such parties of the deadline for objecting to the assumption and assignment and Cure Amount, which deadline shall not be less than two (2) days prior to the Sale Hearing unless otherwise provided in the Bidding Procedures Order. In cases in which the Sellers are unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00. The Sale Motion and Assignment Notice shall reflect Buyer’s agreement to perform from and after the Closing under the Contracts and Real Property Leases, which, subject to Bankruptcy Court approval shall be the only adequate assurance of future performance necessary to satisfy the requirements of section 365 of the Bankruptcy Code in respect of the assignment to Buyer of such Contracts and Real Property Leases.

7.4 **Further Actions.** Buyer agrees that it will promptly take such actions as are reasonably requested by the Sellers to assist in obtaining the Sale Order and implementing the Bidding Procedures Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code and can provide assurance of future performance under the Contracts and Real Property Leases. Buyer and Sellers agree to cooperate to make all necessary regulatory filings by the Regulatory Filing Date and take any other necessary or desirable actions to facilitate the performance of their obligations hereunder.

7.5 **Plan of Reorganization.** The parties acknowledge that the sale contemplated by this Agreement is a component of Sellers’ Plan of Reorganization (the “Plan”) filed with the Bankruptcy Court herewith. The Plan shall be modified to conform the Plan to the terms and conditions of this Agreement. The parties further agree that confirmation of the Plan and the Effective Date of the Plan are not preconditions to the approval or Closing of the Sale to Buyer under the terms and conditions set forth herein.

ARTICLE VIII **COVENANTS**

The respective parties hereto covenant and agree to take the following actions between the date hereof and the Closing Date.

8.1 **Access to the Business.** Sellers shall afford to the officers, employees and authorized representatives of Buyer (including, without limitation, independent public accountants and attorneys) reasonable access during normal business hours to the offices, properties, Employees and business and financial records of the Sellers to the extent Buyer shall reasonably deem necessary or desirable and shall furnish to Buyer or its authorized representatives such additional information concerning the Purchased Assets, the Business and the operations of Sellers as shall be reasonably requested, including all such information as shall

be necessary to enable Buyer or its representatives to verify the accuracy of the representations and warranties contained in this Agreement, to verify that the covenants of Sellers contained in this Agreement have been complied with, and to determine whether the conditions set forth in Article XI have been satisfied. Buyer agrees that such investigation shall be conducted in such a manner as not to interfere unreasonably with the operations of Sellers. No investigation made by Buyer or its representatives hereunder shall affect the representations and warranties of Sellers hereunder. Buyer expressly acknowledges that any information it receives pursuant to this Section 8.1 is subject to the confidentiality provisions set forth in Section 13.2.

8.2 **Preserve Accuracy of Representations and Warranties.** Each of the parties hereto shall refrain from taking any action that would render any representation or warranty contained in Article V or VI of this Agreement inaccurate as of the Closing Date.

8.3 **Operations Prior to the Closing Date.** Between the Sale Hearing and the Closing, Sellers will cause the Business to be operated in the Ordinary Course of Business and pursuant to the terms of the DIP Facility Budget, and shall not take any action inconsistent with the transactions contemplated hereby and will not permit any material transaction outside the Ordinary Course of Business in respect of the Business without the express written approval of Buyer (which shall not be unreasonably withheld) or unless so ordered by the Bankruptcy Court after notice to Buyer. Sellers shall take no action to the detriment of Buyer or the operation of the Business by Buyer, following the Sale Hearing. Sellers acknowledge and agree that prior to the Closing Date Sellers are operating the Business on behalf of, and in trust for, the Buyer, and shall take no action in contravention thereof. Without limiting the generality of the foregoing, Sellers shall not, without the express written approval of Buyer, which shall not be unreasonably withheld, or authorization by order of the Bankruptcy Court:

(a) except as set forth on Schedule 5.6(c), fail to maintain or renew all copyright, trademark and patent applications or fail to maintain any registered copyrights, trademarks or patents;

(b) fail to maintain in good working order any Equipment, unless it has a de minimis impact upon the Business;

(c) fail to maintain all insurance covering loss or destruction of the Purchased Assets or conduct of the Business currently in effect;

(d) fail to maintain all material relationships with lessors, licensors, suppliers, customers, and employees of the Business;

(e) fail to preserve the strict confidence of all trade secrets related to the Business, subject to the Sellers' ability to disclose information to other prospective bidders and their advisers in accordance with the terms of the standard non-disclosure agreement furnished to prospective bidders;

(f) enter into any contract, agreement, undertaking or commitment affecting the Business outside of the Ordinary Course of Business or enter into any agreement, undertaking or commitment that will have the effect of competing with Buyer's operation of the Business;

(g) sell, lease (as lessor), transfer or otherwise dispose of (including any transfers from a Seller to any of its Affiliates), or mortgage or pledge, or impose or suffer to be imposed any Encumbrance on, any of the Purchased Assets or Shares, other than consenting to the assignment of the DIP Facility from the DIP Lenders to Buyer pursuant to the terms hereof;

(h) unless to Sellers' benefit or in the Ordinary Course of Business, amend, modify, extend, renew or terminate any Contract or Real Property Lease that is to be assumed by Buyer, or terminate, waive or amend any right under any of the Contracts or Real Property Leases that are to be assumed by Buyer;

(i) enter into any business or arrangement or otherwise take any action that would reasonably be expected to have a material adverse impact on the ability of the Buyer to obtain any material consents of Governmental Bodies necessary in connection with the Business;

(j) intentionally fail to notify Buyer in writing of the commencement of any material litigation against any Seller or the Business;

(k) hire any new individuals or increase salaries or wages, declare bonuses, increase compensation or benefits or institute any new employment arrangement, benefit plan or program with respect to any Employee, except as required by law, as required by the terms of previously existing Employee Plans or in the Ordinary Course of Business;

(l) intentionally fail to notify Buyer in writing of the proposed entry into any Contract or Real Estate Lease and the intention to reject any Contract or Real Estate Lease; or

(m) enter into any commitment for capital expenditures except pursuant to the DIP Facility Budget; or

(n) fail to comply with all requirements of Law applicable to the Purchased Assets, and promptly after receipt thereof, give Sellers copies of any notice received from any Governmental Body or other Person alleging any violation of or liability under any such Requirements of Law.

To the extent that there is any ambiguity as to whether a contract, agreement, undertaking or commitment affects the Business or the Purchased Assets or is outside of the Ordinary Course of Business, Sellers shall consult with Buyer in good faith prior to entering into such contract, agreement, undertaking or commitment. For purposes of clarity, nothing in this Section 8.3 shall be construed to in any way limit Sellers' ability to auction the Purchased Assets to the highest bidder at the Auction.

8.4 **Notification by Sellers of Certain Matters.** During the period prior to the Closing Date, Sellers will promptly advise Buyer in writing of (a) any notice, objection or other communication from any third Person alleging that the consent of such third Person is or may be required in connection with the transactions contemplated by this Agreement, (b) any material default under any Contract or Real Property Lease or event which, with notice or lapse of time or both, would become such a default on or prior to the Closing Date and of which Sellers have Knowledge, and (c) any Material Adverse Change.

8.5 **Regulatory Approvals.** Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to apply to all applicable Governmental Bodies for any approval required for the consummation of the transactions contemplated by this Agreement, shall prosecute such applications in good faith and with due diligence before the Governmental Bodies, and in connection therewith shall take such action or actions as may be necessary or reasonably required in connection with the applications, including furnishing to the Governmental Bodies any documents, materials, or other information requested by them in order to obtain the required approvals as expeditiously as practicable. In addition, to the extent practicable, the parties hereto shall use their best efforts to (a) promptly notify each other of any communication to that party from any Governmental Body with respect to the applications described in this paragraph, (b) permit a representative of the other party reasonably acceptable to the first party to attend and participate in meetings (telephonic or otherwise) with any Governmental Body, and (c) permit the other party to review in advance, as reasonable, any proposed written communication to a Governmental Body. No party hereto shall knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause any Governmental Body not to grant approval of any application or materially to delay such approval, to the material detriment of the other party. However, Buyer shall be solely responsible for obtaining authorization to offer telecommunications services in any jurisdiction in which it does not currently hold such authorization. Sellers shall provide Buyer with such assistance in obtaining such authorizations as Buyer shall reasonably request, and DIP Facility funds shall be made available for all Regulatory Approval actions of Buyer and Sellers. Buyer shall also file all reports, and cause to be delivered all notices to Sellers' telecommunications service customers required by 47 C.F.R. Section 64.1120(e) and comparable State regulations.

8.6 **Publicity.** Neither the Sellers nor Buyer shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Buyer or the Sellers, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Buyer or the Sellers list securities, provided that the party intending to make such release shall use its reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.7 **Sellers' Name Change.** The Sellers shall, following the Closing, upon any request of Buyer, execute and deliver to Buyer appropriate documents to change the names of each Seller (except a Seller whose Shares have been acquired by Buyer) to a name substantially dissimilar to "Global Capacity", "20/20 Technologies", "Capital Growth", "CentrePath", "CenterPath", "Nexvu Technologies" and "FNS 2007." The Sellers shall thereafter file any necessary documents to reflect the foregoing name changes with the appropriate Governmental Body for each jurisdiction in which each Seller is organized and/or qualified to do business. Notwithstanding the foregoing, nothing herein shall be deemed to limit or restrict the ability of Buyer to utilize such names in connection with its operation of the Business or otherwise.

8.8 **Additional Matters.** Subject to the terms and conditions of this Agreement, each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be

taken, all action and to do, or cause to be done, all things necessary, proper, or advisable under applicable Laws and regulation to consummate and make effective the transactions contemplated by this Agreement, including using all commercially reasonable efforts to obtain all necessary waivers, consents, and approvals required under this Agreement. Prior to the Closing, Sellers shall take any and all necessary actions to transfer, assign, record or perfect in its name record title to any of its Purchased Assets that is not presently held or recorded in its name, including, without limitation, filing any necessary notices of assignment in the United States Patent and Trademark Office or United States Copyright Office, as applicable, with respect to the Intellectual Property.

8.9 **Post-Closing Operation of Non-Transferred Assets.** Subsequent to Closing, to the extent any Non-Transferred Assets exist, Buyer or Seller, in the sole determination of Buyer, shall operate the Non-Transferred Assets pursuant to a management agreement agreed to between Sellers and Buyer until the Non-Transferred Assets are transferred to Buyer.

ARTICLE IX

AGREEMENTS REGARDING EMPLOYEES

9.1 **Employees.** Buyer shall have the right, but not the obligation, to employ or engage as contractors any or all of the Employees as Buyer determines in its sole and absolute discretion. The terms of employment offered to any Employees shall be determined by Buyer in its sole and absolute discretion. Any Employees actually employed by Buyer are referred to herein as “Transferred Employees.” Buyer shall deliver a list of the Employees it intends to hire prior to the Sale Order Date. Sellers shall deliver to Buyer on or before the Closing Date all personnel files and employment records relating to the Transferred Employees (including completed I-9 forms and attachments with respect to all Transferred Employees, except for such employees as Seller certifies in writing are exempt from such requirement). Buyer may, at its option in its sole discretion offer a management incentive plan to any of the Transferred Employees on rates commensurate with the industry in consideration for nonsolicitation of the Sellers’ existing customers for a period of one year following the Closing Date in the event they are terminated within such time period. Nothing herein shall limit Sellers’ covenants set forth herein not to compete with Buyer prior to or following the Sale Hearing. In the event of an Alternative Transaction, Buyer may require, as a condition of Closing, that Company terminate or cause to be terminated any Employees designated by Buyer, in its sole and absolute discretion.

9.2 **Employee Plans.** Unless the Buyer, in its sole discretion, elects on or after the Closing, to adopt any of Sellers’ Employee Plans, the Sellers shall retain (or, in the event of an Alternative Transaction, Sellers shall otherwise cause to be terminated, assumed by one or more third parties, or otherwise disposed of) (i) all liabilities and obligations in respect of its past, present and future employees under applicable Laws and (ii) all liabilities and obligations under any “employee benefit plan” within the meaning of Section 3(3) of ERISA and any other employee benefit plan or program maintained or contributed to by Sellers or any ERISA Affiliate, including any Employee Plans, and Buyer shall have no liability or obligation whatsoever under the Employee Plans nor shall Buyer assume the sponsorship of the Employee Plans. Buyer may, at its option, in its sole discretion, offer such benefit plans or employee plans to any Transferred Employees on such terms and conditions as are commensurate with other companies of the size of

Sellers in the industry, provided that nothing herein shall require Buyer to offer any employee or other benefit plans to Transferred Employees.

9.3 **Other Obligations.** Except as otherwise required by Law, specified in this Agreement, set forth on Schedule 9.3, or otherwise agreed in writing by Buyer and/or its Affiliates (including by inclusion in the Wind Down Budget), neither Buyer nor its Affiliates shall be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee of the Sellers on account of any termination of such Employee's employment on or before the Closing Date, and such benefits (if any) shall remain obligations of the Sellers.

9.4 **Forms W-2 and W-4.** The Sellers and Buyer shall adopt the "standard procedure" for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and Forms W-4 (Employee's Withholding Allowance Certificate) regarding the Transferred Employees. Under this procedure, Sellers shall keep on file all IRS Forms W-4 provided by the Transferred Employees for the period required by applicable law concerning record retention and Buyer shall obtain new IRS Forms W-4 with respect to each Transferred Employee.

9.5 **Employee Communications.** Prior to making any written or oral communications to the Employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, Sellers shall provide Buyer with a copy of the intended communication.

ARTICLE X **TAXES**

10.1 **Transfer Taxes.** No Seller owns any real property. Buyer shall have no liability hereunder for any Transfer Taxes. The Sellers shall seek to include in the Sale Order with respect to this Agreement a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes under Section 1146(a) of the Bankruptcy Code. The Sellers and Buyer shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds of Transfer Taxes.

10.2 **Purchase Price Allocation.** The allocation of the Purchase Price (plus any Assumed Liabilities, to the extent permitted by the Code) among the Purchased Assets shall be determined pursuant to Schedule 10.2 prepared by Buyer as soon as practicable on or after the Closing Date (or, in the event of an Alternative Transaction, in accordance with such other method as is customary and in accordance with generally accepted accounting principles in connection with an acquisition of equity interests). Buyer and the Sellers hereby covenant and agree that the values assigned to the Purchased Assets in Schedule 10.2 shall be conclusive and final for all purposes of this Agreement, to the extent permitted by the Code. Buyer and the Sellers further covenant and agree not to take a position on any Tax Return or in any judicial or administrative proceeding that is inconsistent with the allocations specified in Schedule 10.2, provided that nothing contained herein shall prevent the Sellers and Buyer from settling any proposed deficiency or adjustment by any Taxing Authority based upon or arising out of the Purchase Price allocation, and neither the Sellers nor Buyer shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such

allocation. Buyer and the Sellers each shall file with their respective U.S. federal income Tax Returns (if otherwise required to be filed) for the tax year in which the Closing occurs an IRS Form 8594 (or other applicable form) in accordance with Schedule 10.2. Buyer and the Sellers each shall deliver to the other a copy of the IRS Form 8594 (or other applicable form), as so filed with its respective U.S. federal income Tax Return, if any, within thirty (30) days of the filing of such return.

10.3 **Tax Returns.** Sellers shall prepare or cause to be prepared all Tax Returns relating to the Purchased Assets for the periods ending on or prior to the Closing Date. Buyer shall prepare and file all Tax Returns relating to all real property taxes, personal property taxes, or similar ad valorem obligations levied with respect to the Purchased Assets (excluding any Transfer Taxes) for any taxable period beginning on or before and ending after the Closing Date (a “Straddle Period,” and such taxes, “Straddle Period Taxes”), whether imposed or assessed before or after the Closing Date, other than Straddle Period Tax Returns that Sellers are required to file by applicable law. The Liability for payment of each such Straddle Period Tax shall be prorated between Buyer and Sellers at the Closing Date based on 100% of the amount of such Straddle Period Tax imposed for the prior taxable period. The portion of each such Straddle Period Tax that is allocable to the Sellers shall be the product of (i) 100% of the amount of such tax for the prior taxable period and (ii) a fraction, the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire tax period. The amount of tax allocable to the Sellers pursuant to this section in excess of amounts allocated thereto as provided for as Priority Claims or Administrative Expense Claims shall be withheld from the Purchase Price, and the Buyer shall be responsible for remitting all Straddle Period Taxes to the appropriate Taxing Authority when due.

10.4 **Cooperation.** Sellers and Buyer agree to furnish to each other upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Business (including access to books and records related to the Business) as is reasonably necessary for the filing of all Tax Returns and other tax filings, the making of any election related to taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding related to taxes. Sellers and Buyer shall provide timely notice to each other in writing of any pending or threatened tax audits, assessments or litigation with respect to the Purchased Assets or the Business for any taxable period for which the other party may have Liability under this Agreement.

ARTICLE XI **CONDITIONS PRECEDENT**

11.1 **Conditions Precedent to Obligations of Buyer.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of the Sellers set forth in Article V shall be true and correct in all material respects as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date)

with the same force and effect as though made on and as of the Closing Date (or such earlier date), and Buyer shall have received a certificate signed by an authorized officer of the Sellers on behalf of all the Sellers, dated the Closing Date, to the foregoing effect;

(b) the Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and Buyer shall have received a certificate signed by an Executive Officer of the Sellers on behalf of all Sellers, dated the Closing Date, to the foregoing effect;

(c) all required consents and all other consents, approvals and actions of, filings with and notices to any Governmental Body or any other Person set forth on Schedule 5.3(b) shall have been duly obtained, delivered, made or given and shall be in full force and effect, provided that Buyer may waive this requirement and Close on the Regulatory Approval Date, with certain Purchased Assets as Non-Transferred Assets under Section 2.5, in its sole discretion;

(d) there shall not have occurred an event or failure to act causing a Material Adverse Change;

(e) the Sellers shall have delivered, or caused to be delivered, to Buyer all of the items set forth in Section 4.2(a);

(f) Buyer shall not have otherwise terminated this Agreement in accordance with the terms of Section 12.1;

(g) the Sale Order and Confirmation Order, as applicable, shall have been entered and shall not be subject to a appeal or a stay and the Bankruptcy Court shall have provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Confirmation Order shall be acceptable to Buyer and shall contain terms and as requested by Buyer. The Sale Order and Confirmation Order, as applicable, shall have become final and non-appealable orders, unless this condition has been waived by Buyer in its sole discretion;

(h) Telecommunications Regulatory Matters.

(i) Buyer will have been duly licensed and/or registered as a provider of regulated telecommunications services and be in good standing to so provide such regulated telecommunications services in each of the jurisdictions set forth in Schedule 11.1(h)(i) hereto, in which jurisdictions the nature of the business to be conducted by Buyer after the Closing Date makes such licensing or registration of Buyer necessary, unless waived by Buyer in its sole discretion.

(ii) Schedule 11.1(h)(ii) hereto sets forth a list of all filings and regulatory approvals required to be obtained under the Telecommunications Laws to enable Buyer to purchase the Purchased Assets and consummate the transaction contemplated by

this Agreement, other than such filings and regulatory approvals that pertain solely to Buyer's authorization to operate the Purchased Assets after the Closing Date (*i.e.*, applications for certificates of public convenience and necessity or similar authorizations), and includes all filings and regulatory approvals required for Sellers to hold full and complete qualification, licensing and other regulatory approvals for all conduct of the Business.

- (iii) All necessary consents, approvals, and authorizations required under the State Telecommunications Laws for the transfer to Buyer of the customer accounts and other assets of Sellers used in providing intrastate telecommunications services will have been obtained, except for approvals relating solely to Non-Transferred Assets approved by Buyer in its sole discretion.
- (iv) There shall be no action, order, claim, suit proceeding, litigation, review, notice or, to the Knowledge of Sellers, investigation or inquiry, pending before the FCC or any State Regulatory Commission, relating to or affecting Sellers or any of their respective properties or assets or any officer or director or shareholder of Sellers, or the payments of sums owing to such authorities as set forth on Schedule 5.12 hereto; and

(i) Any necessary management agreement shall have been entered into and any necessary Bankruptcy Court approvals obtained to do so;

(j) All necessary documents, assignments and agreements have been executed to document the DIP Facility and Sale Facility and the Buyer has a fully perfected first priority security interest and priming lien in all prepetition and postpetition assets; and

(k) All assets of Magenta have been included as Purchased Assets, if the Buyer has given Sellers notice regarding such assets; further, all liabilities of Magenta have been discharged or released, under the Plan or otherwise.

11.2 **Conditions Precedent to the Obligations of Sellers.** The obligations of the Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Sellers in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Buyer set forth in Article VI shall be true and correct in all material respects on and as of the date hereof and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), except that those representations and warranties that are qualified by materiality, Material Adverse Change or similar phrase shall be true and correct in all respects as

of the date hereof and on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date, and the Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(c) all required consents, approvals and actions of, filings with and notices to any Governmental Body or any other Person set forth on Schedule 5.3(b) shall have been duly obtained, made or given and shall be in full force and effect;

(d) Buyer shall have delivered, or caused to be delivered, to the Sellers all of the items set forth in Section 4.2(b);

(e) at or prior to the Closing, Buyer shall have made arrangements, satisfactory to the Buyer in its sole discretion, to promptly pay the Cure Amount set forth on the Cure Schedule, so that the Contracts and Real Property Leases may be assumed by the Sellers and assigned to Buyer in accordance with the provisions of section 365 of the Bankruptcy Code;

(f) at or prior to the Closing, Buyer shall have paid the Closing Cash Payment through an advance on the Sale Facility;

(g) Buyer shall hold authorization to offer telecommunications services, if required, in each jurisdiction in which Sellers provide such services; or, in those States in which Non-Transferred Assets are located, Buyer shall know of no reason why it cannot obtain all such authorizations from State Regulatory Commissions in the Ordinary Course of Business;

(h) The Sellers shall not have otherwise terminated this Agreement in accordance with the terms of Section 12.1; and

(i) Buyer shall have provided Sellers with the Sale Facility on substantially the same terms and conditions (including priority of liens) as the DIP Facility.

ARTICLE XII **TERMINATION**

12.1 **Termination.** Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual consent of Buyer and Sellers.

(b) automatically and without any action or notice by either the Sellers to Buyer, or Buyer to the Sellers, immediately upon:

- (i) the issuance of a final and nonappealable order, decree, or ruling or any other action by a Governmental Body to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets or any material portion thereof contemplated hereby;
 - (ii) approval by the Bankruptcy Court of a transaction otherwise selling or disposing of the Purchased Assets; or
 - (iii) acceptance by Sellers of a transaction otherwise selling or disposing of the Purchased Assets or the Shares pursuant to an Alternative Transaction).
- (c) by Buyer, in its sole discretion:
- (i) if the Bankruptcy Court has not entered the Sale Order by February 1, 2011;
 - (ii) if there has been a violation or breach by the Sellers of any material representation, warranty or covenant contained in this Agreement that has not been waived by Buyer;
 - (iii) on or at any time after the Regulatory Approval Date if the Closing shall not have occurred due to failure to obtain the Regulatory Approval of a Governmental Body;
 - (iv) if, prior to the Closing Date, Sellers' Bankruptcy Cases shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee or examiner with expanded powers is appointed in the Bankruptcy Cases;
 - (v) if there shall be excluded from the Purchased Assets any Contract that is not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than any Seller, to the extent that such consent shall not have been given prior to the Closing and such Contract shall, in the opinion of Buyer in its absolute discretion, prevent it from effectively operating the Business; or
 - (vi) Buyer and Sellers fail to agree to a Wind Down Budget or a Sale Facility Budget by the Closing Date.
- (d) by Sellers, prior to the Closing:
- (i) if there has been a violation or breach by Buyer of any material representation or warranty contained in this Agreement or any action has occurred with respect to the condition precedent set forth in Section 11.2 that (x) has rendered the satisfaction of any condition to the obligations of Sellers impossible or is not curable

or, if curable, has not been cured within ten (10) days following receipt by Buyer of written notice of such breach from Sellers, and (y) has not been waived by Sellers;

- (ii) at any time after the Regulatory Approval Date if the Closing shall not have occurred due to failure to obtain the approval of a Governmental Body;
- (iii) if Buyer's obligation to close (other than the accuracy of any Seller's representations or warranties) have been met, there is no pending appeal and stay pending appeal of the sale contemplated hereunder, Sellers are ready, willing and able to close the sale contemplated hereunder, no Seller is in default of this Agreement, nor is there an event which, with the giving of notice or passing of time, would be a default to this Agreement, and Buyer fails to consummate the Closing within thirty (30) Business Days following the date of satisfaction of the last such condition to Closing;
- (iv) if Buyer and Sellers fail to agree to a Wind Down Budget or a Sale Facility Budget by the Closing Date.

12.2 **Effect of Termination.** In the event of termination pursuant to Section 12.1, this Agreement shall become null and void and have no effect and no party shall have any liability to any other (other than pursuant to the provisions of this Article XII, Article XIII, provisions of this Agreement that relate to sale of all or part of the Purchased Assets to a purchaser other than the Buyer, and any other provisions of this Agreement that expressly survive termination), provided, however, that nothing in this Section 12.2 shall relieve Buyer or Seller of any liability for a breach of this Agreement prior to the date of termination. Should Sellers be in breach of any of their representations or warranties contained in this Agreement, Buyer shall be entitled to waive such breach or elect to terminate this Agreement. If Buyer elects to waive such breach and close the transactions contemplated herein, Buyer shall not be entitled to any damages as a result of such breach and shall not be entitled to set off any of the monies it owes to Sellers under this Agreement as a result of such breach of representation or warranty.

ARTICLE XIII MISCELLANEOUS

13.1 **Survival.** No representations, warranties, covenants and agreements of Seller and Buyer made in this Agreement, including Buyer's assumption of the Assumed Liabilities, shall survive the Closing Date except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for obligations extending after the Closing, or as otherwise expressly provided in this Agreement.

13.2 **Confidential Nature of Information.** The following paragraph is subject to any disclosure requirements under the Bankruptcy Code or imposed by the Bankruptcy Court:

Buyer on the one hand and Sellers on the other hand, each agree that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, at the request of the disclosing party, will return to the other party all copies of nonpublic documents and materials which have been furnished in connection therewith and all transcripts, notes and summaries thereof. Such non-public documents, materials and information shall not be communicated to any third Person (other than to Buyer's and Sellers' counsel, accountants or financial advisors, in each case subject to the recipient's agreement to keep the same confidential). No other party shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Purchased Assets; provided, however, that after the Closing, Buyer may use or disclose any confidential information included in the Purchased Assets or otherwise reasonably related to the Purchased Assets and the Business. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such party from a source other than the disclosing party, (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents or (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed. Notwithstanding clause (iii) of the preceding sentence, in the event that any party is required to disclose any confidential information by applicable law, judicial process or rule of any national securities exchange, it is agreed that the party subject to such requirement will provide the other party with prompt notice of such requirement and such party may seek an appropriate protective order if it so desires.

13.3 **Notices.** Any notices, demands, requests, consents, approvals, reports or other communications required or permitted by this Agreement must be (i) in writing and is deemed given when (a) delivered personally to the recipient, (b) sent by confirmed facsimile before 5:00 p.m. Eastern Time on a Business Day with a copy of such facsimile sent to the recipient by reputable overnight courier service (charges prepaid) on the same day, (c) five (5) days after deposit in the U.S. mail, mailed by registered or certified mail, return receipt requested, postage prepaid, or (d) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); and (ii) addressed to the other party at the address set forth below, or at such other address as either party may designate from time to time in writing in accordance with this Section.

If to Buyer, to: Pivotal Global Capacity LLC
 c/o Pivotal Group, Inc.
 3200 E. Camelback Road, Suite 295
 Phoenix, AZ 85018
 Attention: Jerry Pence
 Telephone: 602-956-7200
 Facsimile: 602-956-2313
 JPence@PivotalGroup.com

with a copy to:

Lewis and Roca, LLP
40 North Central Ave
Phoenix, AZ 85004
Attention: Susan M. Freeman, Esq.
Telephone: 602-262-5756
Facsimile: 602-734-3824
SFreeman@LRLaw.com

If to Sellers, to: Global Capacity Group, Inc., *et al.*
200 South Wacker Drive – Suite 1650
Chicago, IL 60606
Attention: Patrick C. Shutt, CEO, Global Capacity
Telephone: 312-660-5097
Facsimile: 312-613-2422

with a copy to:

Heller, Draper, Hayden, Patrick & Horn, L.L.C.
650 Poydras Street - Suite 2500
New Orleans, LA 70130
Attention: Douglas S. Draper
Telephone: 504-299-3333
Facsimile: 504-525-3761

and

Shefsky & Froelich Ltd
111 East Wacker Drive – Suite 2800
Chicago, IL 60601
Attention: Mitchell D. Goldsmith
Telephone: (312) 836-4006
Facsimile: (312) 275-7569

13.4 **Successors and Assigns.**

(a) Buyer shall have the right to assign to an Affiliate any of its rights or obligations under this Agreement in whole or in part (including the right to acquire any of the Purchased Assets). In the event of any assignment pursuant to this Section 13.4(a), Buyer shall not be relieved of any liability or obligation hereunder.

(b) Buyer shall have the right to assign this Agreement or any of its rights or obligations hereunder as collateral to any lender of Buyer; provided, however, that no such assignment shall relieve Buyer of its obligations to the Sellers hereunder.

(c) Sellers shall not assign this Agreement or any of their rights or obligations hereunder and any such assignment shall be void and of no effect.

(d) This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto, including any trustee appointed in any of the Bankruptcy Cases or subsequent chapter 7. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided in this Section 13.4.

13.5 **Access to Records after Closing.** For a period of five (5) years after the Closing Date, Sellers and their representatives shall have reasonable access to all of the books and records of the Purchased Assets transferred to Buyer hereunder to the extent that such access may reasonably be required by Sellers in connection with matters relating to or affected by the operations of the Business on or prior to the Closing Date. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours. Sellers shall be solely responsible for any costs or expenses incurred by them pursuant to this Section 13.5. If Buyer shall desire to dispose of any of such books and records prior to the expiration of such five-year period, Buyer shall, prior to such disposition, give Sellers a reasonable opportunity, at Sellers' expense, to segregate and remove such books and records as Sellers may select. In the event Sellers seek and receive approval from the Bankruptcy Court to abandon or destroy books and records, Sellers shall advise Buyer of said order and Buyer shall be relieved of its obligations under this Section 13.5 and may, in its sole discretion, destroy any and all books and records related to the Business.

13.6 **Entire Agreement; Amendments.** This Agreement (including the Schedules and Exhibits hereto and any management agreement) represents the entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13.7 **Interpretation.** Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. No party shall benefit from any rule construing this Agreement against that party as drafter, and it is acknowledged that the document is jointly drafted.

13.8 **Expenses.** Each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants, except as otherwise provided in this Agreement.

13.9 **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

13.10 **Execution in Counterparts; Facsimile and E-mail Delivery.** This Agreement may be delivered via facsimile or e-mail transmission of an executed counterpart of or signature page to this Agreement and may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each of Sellers and Buyer and any facsimile, e-mail pdf or photocopy of an executed counterpart of or signature page to this Agreement shall be given the same effect as the original.

13.11 **Further Assurances.** On and after the Closing Date (i) Sellers shall deliver to Buyer such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may reasonably request or as may be otherwise reasonably necessary to vest in Buyer all the right, title and interest of Sellers in, to or under any or all of the Purchased Assets, and (ii) Sellers shall take all steps as may be reasonably necessary to put Buyer in actual possession and control of all the Purchased Assets and to obtain the full benefit thereof.

13.12 **Governing Law; Forum.** This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court or the Bankruptcy Court accepts jurisdiction, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, any state or federal court having competent jurisdiction in Delaware.

13.13 **Waiver of Jury Trial.** EACH PARTY HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY

BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

13.14 **Negotiated Agreement.** Each of the Sellers and Buyer acknowledges that it has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that, if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any party because such party or its representatives drafted such provision.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year that above written.

SELLERS:

CAPITAL GROWTH SYSTEMS, INC.

By: _____
Name:
Title:

20/20 TECHNOLOGIES, INC.

By: _____
Name:
Title:

20/20 TECHNOLOGIES I, LLC

By: _____
Name:
Title:

CENTREPATH, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY GROUP, INC.

By: _____
Name:
Title:

CAPITAL GROWTH ACQUISITION, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY DIRECT, LLC, (GCD)

By: _____
Name:
Title:

NEXVU TECHNOLOGIES, LLC

By: _____
Name:
Title:

FNS 2007, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY HOLDCO, LLC

By: _____
Name:
Title:

BUYER:

PIVOTAL GLOBAL CAPACITY, LLC,
an Arizona limited liability company

By: FFN Investments, LLC
an Arizona limited liability company,
Its: Sole Member

By: Pivotal Capital Corporation,
an Arizona corporation
Its: Manager

By: _____
Richard Garner
Its: Treasurer

Schedule 1.1(a)

Permitted Encumbrances

None.

Schedule 2.1(a)**Personal Property**

GC Entity	Item	Category	Purchase/In Service Date
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/2/2007
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/16/2007
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/16/2007
2020 Technologies, Inc.	Laptop CP	Computer Hardware	1/25/2007
2020 Technologies, Inc.	Thinkpad T60	Computer Hardware	2/9/2007
2020 Technologies, Inc.	Thinkpad T60	Computer Hardware	2/9/2007
2020 Technologies, Inc.	Thinkpad T60	Computer Hardware	2/9/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	2/22/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	2/22/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	2/22/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	3/1/2007
2020 Technologies, Inc.	Dell Laptop	Computer Hardware	3/7/2007
2020 Technologies, Inc.	Desk	Furniture & Fixtures	4/1/2003
2020 Technologies, Inc.	LaCasse office furn	Furniture & Fixtures	6/24/2003
2020 Technologies, Inc.	Fireproof Filing Cabinets	Furniture & Fixtures	3/18/2003
2020 Technologies, Inc.	Tops South office Furn	Furniture & Fixtures	8/28/2005
2020 Technologies, Inc.	Office Furn MN	Furniture & Fixtures	5/1/2007
2020 Technologies, Inc.	Office Furn MN	Furniture & Fixtures	5/1/2007
2020 Technologies, Inc.	Galaxy bow front desk	Furniture & Fixtures	5/1/2007
2020 Technologies, Inc.	Dell Direct Sales	Computer Hardware	6/30/2007
2020 Technologies, Inc.	Dell Direct Sales	Computer Hardware	7/19/2007
2020 Technologies, Inc.	Dell Direct Sales	Computer Hardware	12/17/2007
Centrepath, Inc.	AC unit 265 Winter	Leasehold Improvements	4/1/2008
Centrepath, Inc.	New NOC - Majestic Const.	Leasehold Improvements	6/1/2009

GC Entity	Item	Category	Purchase/In Service Date
Centrepath, Inc.	Dim Data	Computer Hardware	7/1/2007
Centrepath, Inc.	Toshiba 46" HDTV - NOC	Computer Hardware	1/8/2008
Centrepath, Inc.	PC servers in India	Computer Hardware	7/1/2008
Centrepath, Inc.	Test system platform	Computer Hardware	7/1/2009
Centrepath, Inc.	Power conditioning	Computer Hardware	6/30/2010
Centrepath, Inc.	GP Licenses	Computer Software	6/20/2007
Centrepath, Inc.	Cisco 8.5 UPG to 8.5	Computer Software	1/1/2008
Centrepath, Inc.	5 Citrix licenses purchase	Computer Software	6/1/2008
Centrepath, Inc.	Server	Network Infrastructure	7/2/2007
Centrepath, Inc.	TTL supply - Router/Cisco	Network Infrastructure	5/1/2008
Global Capacity Direct, LLC	New Laptops, Port Replicators and Memory	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	New Upss And Photoshop	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	New Hire Laptop	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptop Doc Station	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptop Doc Station	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptop Doc Station	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	HP Montor	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Network Upgrade	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptops allocated from VUS	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Laptops allocated from VUS	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	Router	Computer Hardware	11/1/2009
Global Capacity Direct, LLC	Computer Equipment	Computer Hardware	5/1/2010
Global Capacity Direct, LLC	Sun Systems Gold Server	Computer Hardware	5/1/2010
Global Capacity Direct, LLC	Computer Software Rating system	Computer Software	11/22/2008
Global Capacity Direct, LLC	Capitalize Oracle Enhancements vendor CSWL	Computer Software	11/22/2008
Global Capacity Direct, LLC	Capitalize Oracle Enhancements vendor CSWL	Computer Software	11/22/2008
Global Capacity Direct, LLC	Software Update - PV+	Computer Software	11/22/2008
Global Capacity Direct, LLC	Software	Computer Software	11/22/2008
Global Capacity Direct, LLC	CIT Lease 1	Computer Hardware	11/22/2008

GC Entity	Item	Category	Purchase/In Service Date
Global Capacity Direct, LLC	CIT Lease 2	Computer Hardware	11/22/2008
Global Capacity Direct, LLC	SF Cable And Connectors - 24 Conductor 735a 1000 Ft	Leasehold Improvements	11/22/2008
Global Capacity Direct, LLC	Labor and Electrical Supplies for SF Colo	Leasehold Improvements	11/22/2008
Global Capacity Direct, LLC	Furniture	Furniture & Fixtures	6/1/2007
Global Capacity Group, Inc	Cisco timing communications control wsoftware	Computer Hardware	7/11/2007
Global Capacity Group, Inc	Wireless fiber link	Computer Hardware	12/1/2007
Global Capacity Group, Inc	Laptops- K. Towns/A. Ramirez	Computer Hardware	2/14/2007
Global Capacity Group, Inc	Server, edge rack, +++	Computer Hardware	3/13/2007
Global Capacity Group, Inc	2 laptops/2desktops	Computer Hardware	4/14/2007
Global Capacity Group, Inc	Laptop/printer - B.Horton	Computer Hardware	7/1/2007
Global Capacity Group, Inc	Furniture	Furniture & Fixtures	1/14/2007
Global Capacity Group, Inc	DS3M card	Network Infrastructure	12/18/2008
Global Capacity Group, Inc	Cross connect Card	Network Infrastructure	11/19/2008
Global Capacity Group, Inc	Cross connect card	Network Infrastructure	8/17/2009
Global Capacity Group, Inc	OC3/12/48	Network Infrastructure	8/17/2009
Global Capacity Group, Inc	DS3 card #40913329 via CP	Network Infrastructure	7/24/2009
Global Capacity Group, Inc	Various Cisco Components	Network Infrastructure	1/21/2009
Global Capacity Group, Inc	Various Cisco Components	Network Infrastructure	1/25/2009
Global Capacity Group, Inc	Various Cisco Components	Network Infrastructure	1/15/2009
Global Capacity Group, Inc	One Market Place assets	Network Infrastructure	4/30/2010
Global Capacity Group, Inc	One Market Place assets	Network Infrastructure	1/29/2010
Magenta netLogic, Ltd	Sharepoint server 2003	Computer Hardware	n/a
Magenta netLogic, Ltd	CVS Server	Computer Hardware	n/a
Magenta netLogic, Ltd	Version 3.6 20 Blackbery device/user licenses	Computer Hardware	11/30/2001
Magenta netLogic, Ltd	CLM Portal Server SQL 2005x2cpu License Win2k3 R2 Enterprise 64bit	Computer Hardware	8/20/2007

GC Entity	Item	Category	Purchase/In Service Date
Magenta netLogic, Ltd	x64 SQL 2005 64 bit for CLM	Computer Hardware	4/22/2009
Magenta netLogic, Ltd	clmp2.magenta-netlogic.com (SQL)	Computer Hardware	7/14/2003
Magenta netLogic, Ltd	Netvespa Server for COLT	Computer Hardware	3/20/2003
Magenta netLogic, Ltd	Pre- Production Netvespa Server for COLT	Computer Hardware	3/20/2003
Magenta netLogic, Ltd	Build + Development Tools	Computer Hardware	n/a
Magenta netLogic, Ltd	SQL 2005 x64	Computer Hardware	6/11/2008
Magenta netLogic, Ltd	Netvespa Test Dev server	Computer Hardware	3/11/2004
Magenta netLogic, Ltd	Primary DNS, File Server for non critical files	Computer Hardware	n/a
Magenta netLogic, Ltd	SQL 2005, Intranet, GC Internal	Computer Hardware	3/31/2003
Magenta netLogic, Ltd	File Server , Backup to Folder, Backup Tape, Backup exec 9	Computer Hardware	n/a
Magenta netLogic, Ltd	Exchange Server 2003 SP2 Active Directory Domain Controller, Secondary DNS	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Hyper-V Server hosting VMs for Dev	Computer Hardware	1/23/2008
Magenta netLogic, Ltd	Main Firewall in Salford Licenced for 100 IP nodes	Computer Hardware	11/30/2003
Magenta netLogic, Ltd	SMS Sender - Gateway	Computer Hardware	12/31/1999
Magenta netLogic, Ltd	Windows Shaepoint Services - WSS 3.0 SP2 On Windows Server 2003 R2 Std x64	Computer Hardware	2/4/2009
Magenta netLogic, Ltd	Staging CLM	Computer Hardware	3/11/2004
Magenta netLogic, Ltd	Not in use, Testing and used to host VMware	Computer Hardware	12/6/2001
Magenta netLogic, Ltd	3com SuperStack3 48 x 10/100 + 2 x 1000	Computer Hardware	n/a
Magenta netLogic, Ltd	3com SuperStack3 48 x 10/100 + 2 x 1000	Computer Hardware	n/a
Magenta netLogic, Ltd	3com SuperStack3 48 x 10/100 + 1 x 1000	Computer Hardware	n/a

GC Entity	Item	Category	Purchase/In Service Date
Magenta netLogic, Ltd	24 x 10/100/1000	Computer Hardware	n/a
Magenta netLogic, Ltd	16 x 10/100/1000	Computer Hardware	n/a
Magenta netLogic, Ltd	clmp3.magenta-netlogic.com (SQL)	Computer Hardware	7/14/2003
Magenta netLogic, Ltd	Active Directory DC DHCP WINS Secondary DNS	Computer Hardware	12/6/2001
Magenta netLogic, Ltd	Sharepoint 2007 Server for Dev Wiki	Computer Hardware	n/a
Magenta netLogic, Ltd	WAN Router 10/100Mb 4 ports + 10/100mb WAN port	Computer Hardware	12/31/2006
Magenta netLogic, Ltd	ADSL Modem/Router 4x 10/100 ports + DSL port	Computer Hardware	12/31/2004
Magenta netLogic, Ltd	Virtela - Netvespa server	Computer Hardware	3/31/2003
Magenta netLogic, Ltd	Spam Filter, PPTP VPN, DNS Server for external Zones	Computer Hardware	11/7/2002

Schedule 2.1(b)

Real Property Leases

Leases for Assumption and Assignment

265 Winter LLC – Lease Agreement and related Amendments for office space at 265 Winter Street, Waltham, MA

G&L Glastonbury – Lease Agreement and related Amendments for office space at 148 Eastern Blvd, 3rd Floor, Glastonbury, CT

University of Salford – Agreement for Tenancy at Will to Magenta netLogic, Ltd for office space at University of Salford, Technology House, Lissadel Street, Salford, M6 6AP

Leases for Rejection

ABN AMRO Bank N.V. – Agreement of Sublease for office space at 49 E 52nd Street, 7th Floor, New York, NY – to be rejected with an effective date of February 28, 2011

Orbitz, LLC – Agreement of Sublease for office space at 200 S Wacker Drive, 16th Floor, Chicago, IL – to be rejected with an effective date of April 30th, 2011

Global Capacity Direct, LLC – Agreement of Sublease to Vanco US, LLC for office space at 200 S Wacker Drive, Suite 1600, Chicago, IL - to be rejected with an effective date of April 30, 2011

Paeth Properties – Lease Agreement for office space at 399 Wall Street, Unit B, Glendale Heights, IL (See Schedule 5.5(c)) – to be rejected with an immediate effective date

Schedule 2.1(c)(i)

Contracts with Customers and Licenses to be assumed

CUSTOMER / CONTRACTING PARTY	CONTRACT
Abovenet Communications	Statements of Work
AboveNet Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Acceris Communications Corp	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Access Point, Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Access2go	Lattis Agreement and related Renewals
Access2Go	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Accessline Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Aero Communications, LLC	Lattis Agreement and related Renewals
Agennix Incorporated	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Allstream/ MTS	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
American Consulting Services., LLC	Lattis Agreement and related Renewals
American Telesis	Lattis Agreement and related Renewals
Americatel (Startec)	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
AT&T Corp.	Agreement No. 20041122.3.C and related Amendments and Schedules
AT&T Global Network Services (UK)	Master Service Agreement
AT&T Long Distance-MISOCX	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
AT&T Services, Inc.	Lattis Agreement and related Renewals
Bayer Corporate and Business Services, LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Bayring Communications	Lattis Agreement and related Renewals
BCE Nexxia	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
BCE Nexxia	Universal Transport Exchange Agreement UTX with Addendums
Bell Canada	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Blue Wireless	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
BRASIL TELECOM OF AMERICA, INC. / GLOBENET	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Broadvox	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Broadwing	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Brookfield Residential Property Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
BT Ignite	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Buckeye Telesystems, Inc.	Lattis Agreement and related Renewals
Business Solutions	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cavalier	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cavalier Telephone	Lattis Agreement and related Renewals
Cavalier Telephone	Development & Data Provider Agreement and related Exhibits
Cbeyond Communications, LLC	Lattis Agreement and related Renewals
Cellular One of East Texas	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
CenturyLink- Lightcore/Embarq/ CenturyTel	Lattis Agreement and related Renewals
CenturyLink-Centurytel	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cerner	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Chastang Ford (Bayou City Ford)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Choice Networks Solutions, Inc	Lattis Agreement and related Renewals
Cingular Wireless	Lattis Agreement and related Renewals
Citizens Telecom Services Company, LLC.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Citynet, LLC	Lattis Agreement and related Renewals
Clarity Communications Group, Inc (Network Clarity)	Lattis Agreement and related Renewals
Cogent Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Comcast Cable Communications Holdings, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Comcast Corporation	Step-In Agreement
Comcast IP Services, LLC	Lattis Agreement and related Renewals
Communication Infrastructure Corp	Lattis Agreement and related Renewals
Community Hospitals of Indiana, Inc.	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Comtel Telecom Assets LP d/b/a Excel Telecommunications	Lattis Agreement and related Renewals
Consolidated Communications	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Consolidated Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Conterra Ultra Broadband, LLC	Lattis Agreement and related Renewals
Core180 Inc	Agreement & Annex for Supply of Web-Based Services and any related Exhibits or Amendments
Covad Communications Company	Lattis Agreement and related Renewals
Covenant Church of Sherman	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Cox Business Services, LLC	Lattis Agreement and related Renewals
Cricket Communications	Lattis Agreement and related Renewals
Cyrus One	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Dataside	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Deltacom, Inc	Lattis Agreement and related Renewals
Dimension Data North America, Inc.	Subcontract Agreement
DKR Capital Partners, L.P.	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Duke Energy	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
DukeNet Communications, L.L.C.	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Electric Lightwave, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Empirical Networks	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Enventis Telecom	Lattis Agreement and related Renewals
Equant Inc d/b/a Orange Business Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Excel	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Fairpoint Communications	Lattis Agreement and related Renewals
Fayez Sarofim and Company	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
FiberTower Corporation	Lattis Agreement and related Renewals
First Communications, LLC	Lattis Agreement and related Renewals
FPL FiberNet	Lattis Agreement and related Renewals
Frontier Communications	Lattis Agreement and related Renewals
Frontier Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Gainesville Regional Utilities (GRU)	Lattis Agreement and related Renewals
GC Telecommunications, Inc.(Global Crossing)	Lattis Agreement and related Renewals
GCEC Telecom	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Gecko Tech	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Geckotech, LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Georgia Public Web	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Global Colocation Services, LLC f/k/a GETCO, LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Global Crossing	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Global Telecom and Technology	Lattis Agreement and related Renewals
GMAC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Grande Communications Network, Inc.	Lattis Agreement and related Renewals
Group Telecom, a Division of Bell Canada	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
GSA -General Services Administration	Lattis Agreement and related Renewals
Hammond Residential Real Estate	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Hannaford Bros. Co.	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Hawaiian Telcom, Inc	Lattis Agreement and related Renewals
Hewlett Packard Limited	Framework Agreement and related Exhibits
Hewlett Packard Limited	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Hewlett Packard Company - Caitlin Insurance Group	Statement of Work for subcontracting of Solutions & Projects
Hines	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Hypercube, LLC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
IBM	Software and Services Engagement Agreement and related Attachments, Amendments and Statements of Work
Independence Blue Cross	Subcontracting of Solutions & Projects
Integra Telecom, Inc.	Lattis Agreement and related Renewals
Integra Telecom, Inc.	Lattis Agreement and related Renewals
International Facility Management Association	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Iron Mountain	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
KCOM Group PLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
KDL - Norlight	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Kentucky Data Link. Inc.	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Klotron	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Kool Connect	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
KPN B.V.	Services Agreement for Optimization Services
KPN Ins Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
LA Ward Cellular	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Lansdowne-Moody	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
LEGACY RESERVES SERVICES INC.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Level 3 Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Level 3 Communications	Lattis Agreement and related Renewals
Lexent Metro Connect LLC	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Lightower (Hudson Valley)	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Logical Net	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Logical Telecom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
LS Networks, Inc /Lightspeed Networks dba	Lattis Agreement and related Renewals
Manhattan Telecommunications Corporation	Lattis Agreement and related Renewals
Marionette Facilities Ltd. f/k/a BP Insurance	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Masergy Communications, Inc.	Lattis Agreement and related Renewals
MBO Corporation	Lattis Agreement and related Renewals
Mc Dermott Will & Emery	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
MegaPath Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
MetroPCS Wireless, Inc.	Lattis Agreement and related Renewals
Missouri Network Alliance, LLC	Lattis Agreement and related Renewals
National Clearing House Assoc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
New Edge Networks	Lattis Agreement and related Renewals
New York City Department of Education	DWDM Monitoring, Maintenance & Problem Solving Services Agreement

CUSTOMER / CONTRACTING PARTY	CONTRACT
Novatel	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
nTelos	Lattis Agreement and related Renewals
NTT America	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
One Communications	Lattis Agreement and related Renewals
Pac.West Telecom, Inc.	Lattis Agreement and related Renewals
Pacific Union International Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Pacnet	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Pacnet	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
PaeTec Communications	Lattis Agreement and related Renewals
PaeTec Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Paradigm Telecom, Inc.	Lattis Agreement and related Renewals
People Support Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
PNM Resources	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Presidio	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Presidio Networked Solutions	Master Subcontractor Agreement and related Statements of Work
Primus Telecommunications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
ProPath	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Qwest (OnFiber)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Qwest Services Corporation	Lattis Agreement and related Renewals
Qwest Services Corporation	Master Services Agreement and related Addendums
RCN Metro. (Neon Optica)	Lattis Agreement and related Renewals
Reliance Globalcom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
RMCC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Sandwich Isles Communications, Inc	Lattis Agreement and related Renewals
SC Net dba Spirit Telecom	Lattis Agreement and related Renewals
Scana Communications, Inc.	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Société Internationale de Télécommunications Aéronautiques (SITA)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Southern California Edison	Lattis Agreement and related Renewals
Southern Light, LLC	Lattis Agreement and related Renewals
Sprint	Lattis Agreement and related Renewals
Sprint Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Staten Island University Hospital	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Suddenlink Communications	Lattis Agreement and related Renewals
Symcor Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Syringa Networks, LLC	Lattis Agreement and related Renewals
TATA Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
TDS Telecom, Inc.	Lattis Agreement and related Renewals
Teague Nall and Perkins	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Tel West	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Telefonica Data USA	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telefonica International Wholesale Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telekenex Communications	Lattis Agreement and related Renewals
Telepacific Communications, Corp	Lattis Agreement and related Renewals
Telequality Communications	Lattis Agreement and related Renewals
TeleQuality Communications Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
TeleSpan Communications, LLC	Lattis Agreement and related Renewals
TeliaSonera	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telus Corporation	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Telus Corporation	Universal Transport Exchange Agreement UTX
Texas New Mexico Power Company	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Texlink	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
The Bank of New York Mellon Corporation	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work

CUSTOMER / CONTRACTING PARTY	CONTRACT
The Children's Hospital of Philadelphia	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
The Trustees of the University of Pennsylvania	Master Consulting Agreement and related Work Orders
Time Warner Cable	Lattis Agreement and related Renewals
Time Warner Cable Residential	Lattis Agreement and related Renewals
Time Warner Telecom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Time Warner Telecom Holdings, Inc	Lattis Agreement and related Renewals
T-Mobile USA	Lattis Agreement and related Renewals
Traffic.com a NAVTEQ Company	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Transaction Network Services, Inc.	Lattis Agreement and related Renewals
Transaction Network Services, Inc.	Lattis Agreement and related Renewals
TRC Telecom Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Tri-County MHMR Services	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
T-Systems	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
TW Telecom (Xspedius)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
TWC Communications, LLC	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
US Cellular Corporation	Lattis Agreement and related Renewals
US Oncology	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
US Signal Company , LLC	Lattis Agreement and related Renewals
USPS-OIG	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Vanderbilt University Medical Center	Master Purchase, License and Service Agreement and related Attachment, Amendments & Statements of Work
Verizon #78 Neill	Lattis Agreement and related Renewals
Verizon BSG # 76	Lattis Agreement and related Renewals
Verizon -# 75	Lattis Agreement and related Renewals
Verizon Business #82(MCI Legacy+Enterprise)	Lattis Agreement and related Renewals
Verizon Business Government Mkts	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Verizon Data Services LLC #74	Lattis Agreement and related Renewals
Verizon Select Services, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

CUSTOMER / CONTRACTING PARTY	CONTRACT
Verizon Services # 77	Lattis Agreement and related Renewals
Verizon VSO - 2 # 81	Lattis Agreement and related Renewals
Verizon VSO # 80	Lattis Agreement and related Renewals
Verizon Wireless- Christina Neumire	Lattis Agreement and related Renewals
Verizon Wireless Mid-Atlantic (NET PHIL)	Lattis Agreement and related Renewals
Verizon Wireless NET AR OK	Lattis Agreement and related Renewals
Verizon Wireless NET CAROLINAS REGION	Lattis Agreement and related Renewals
Verizon Wireless NET Carolinas Region Moss TN	Lattis Agreement and related Renewals
Verizon Wireless NET FL Gulf Coast	Lattis Agreement and related Renewals
Verizon Wireless NET Georgia Region	Lattis Agreement and related Renewals
Verizon Wireless NET Greatplain KS MO	Lattis Agreement and related Renewals
Verizon Wireless NET Houston Gulf Coast	Lattis Agreement and related Renewals
Verizon Wireless NET IL WI MI	Lattis Agreement and related Renewals
Verizon Wireless NET MI IN KY#23846	Lattis Agreement and related Renewals
Verizon Wireless Net New England East	Lattis Agreement and related Renewals
Verizon Wireless NET New England West	Lattis Agreement and related Renewals
Verizon Wireless NET New York Metro	Lattis Agreement and related Renewals
Verizon Wireless NET NJ	Lattis Agreement and related Renewals
Verizon Wireless NET NO CA NEVADA	Lattis Agreement and related Renewals
Verizon Wireless NET PA WV OHIO IN KY	Lattis Agreement and related Renewals
Verizon Wireless NET VA	Lattis Agreement and related Renewals
Verizon Wireless Net WB	Lattis Agreement and related Renewals
Verizon Wireless Northeast Area	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Verizon Wireless Northeast Area Structure Consulting Group, Inc	Lattis Agreement and related Renewals
Verizon Wireless Texas	Lattis Agreement and related Renewals
Virtela Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Warwick Valley Telephone Company	Lattis Agreement and related Renewals
WFMU	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Windstream (D&E Communications)	Lattis Agreement and related Renewals
Windstream (NuVox Communications)	Lattis Agreement and related Renewals
Windstream Communications	Lattis Agreement and related Renewals
Windwave Communications	Lattis Agreement and related Renewals
Wisconsin Independent Network	Lattis Agreement and related Renewals
Wisconsin Independent Networks (WINs)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
XO Communications	Lattis Agreement and related Renewals
XO Communications	USX User Agreement, Development Agreement and related Exhibits, Statements of Work and Enhancements
XO Communications, Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Xtel Communications, Inc.	Lattis Agreement and related Renewals
Youghiogheny Communications-Texas, LLC	Lattis Agreement and related Renewals

CUSTOMER / CONTRACTING PARTY	CONTRACT
Zayo Bandwidth - Minnesota	Lattis Agreement and related Renewals
Zayo Bandwidth (fka FiberNet Telecom)	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Zayo Managed Services, LLC	Lattis Agreement and related Renewals
Zeus Wireless	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

Schedule 2.1(c)(ii)

Contracts with Vendors and Equipment Leases to be assumed

VENDOR / CONTRACTING PARTY	CONTRACT
265 WINTER Street LLC / Hobbs Brook Management	Lease Agreement and related Amendments
360 Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Abovenet Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Allied Communications	Maintenance Agreement
Alpheus Communications, LP	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
AT&T	UTX
AT&T	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
AT&T Global Services	AT&T Alliance Program Agreement – EBS
AT&T Wireless	Corporate Cellular Account # 995683217
BCE Nexxia	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
BUCKEYE TELESYSTEM TELEPHONE	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Cable & Wireless -Energis Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cable Television Laboratories, Inc.	Digital Certificate Authorization Agreement
CableOne, Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Cavalier	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
CCMI Center for Communications Management Information	TelView/Qtel 9000 User Agreement and related Amendments
CenturyTel Fiber Company II,LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Chicago Title Insurance Company	Strict Joint Order Escrow Trust and Confidentiality Agreement and related Exhibits
Chicago Title Insurance Company	Strict Joint Order Escrow Trust and Confidentiality Agreement and related Exhibits
Chicago Title Insurance Company	Strict Joint Order Escrow Trust and Confidentiality Agreement and related Exhibits
Chillicothe Telephone Company	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Cignal	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cincinnati Bell Telephone Company LLC.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Citynet Fiber Network LLC	General Services Agreement and related Schedules
Cogent Communications	Network Services Terms & Conditions and related Addendum
Colospace, Inc.	Colocation Service Agreement
Colt	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Comcast	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Comtel Telecom Assets, LP d/b/a Excel Telecommunications	Three Party Escrow Services Agreement
Continental Resources Inc.	Subcontractor Agreement
Core180 Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
CoStreet Communications	Telecommunications Service Agreement and related Addendum
Covad	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cox	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Data Direct Technologies	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Dominion Telecom(Elantic)(Cavalier)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
DukeNet Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
e.Spire Communications (Time Warner Telecom)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Electric Lightwave, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
ElPaso (Alpheus)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Emcor Services	Maintenance Agreement
Enventis	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Equinix	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
FastTrack Communications, Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Fibernet (Zayo)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
FirstDigital Telecom	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
FRONTIER	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Frontier Communications of Montana	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
FWR Communication Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
G&L Glastonbury, LLC	Lease Agreement and related Amendments

VENDOR / CONTRACTING PARTY	CONTRACT
Geckotech LLC	Customer Order Agreement VOIP Services
Geneseo Telephone Co.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
GeoResults	Wire center boundary and central offices location information
Georgia Public Web	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Global Crossing	UTX
Global Crossing	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Granite Telecommunications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
GTA	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
GTS Carrier Services	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Hugh O'Kane Electric	Emergency Restoration Agreement
ICTX	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Informi GIS	Contract for collecting and processing of property information, etc.
Innercity Fibernet, LLC	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Insight Direct USA, Inc.	Managed Email Services
Insight DSL	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Intellifiber Networks (fka Cavalier)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Internap Network Services Corporation	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Interstate Fibernet	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Iowa Network Services	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
IP Communications Corp	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
IP Networks Inc	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
IPC Network Services, Inc. (fka Westcom)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
IRIS Network	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Iron Mountain	Three Party Escrow Agreement
Iron Mountain Intellectual Property Management, Inc.	Three Party Escrow Services Agreement
Kentucky Data Link/ Norlight Telecommunications, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Killet Software Ing. -GbR	License Agreement for use of Spatial Data

VENDOR / CONTRACTING PARTY	CONTRACT
Klotron, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
KPNQwest Services UK Ltd.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3	UTX
Level 3 Communications	Partner Agreement
Level 3 Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3/ Broadwing	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3/ Broadwing	UTX
Level 3/ Wiltel	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Level 3/ Wiltel	UTX
Lighttower Fiber Networks	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Lipan Telephone Co	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Local Fiber LLC	Telecommunications Service Agreement and related Addendum
Looking Glass (Level 3)	Channel Management Agreement and related Attachments and Amendments
Looking Glass (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Looking Glass Networks, Inc. (Level 3)	UTX and Addendum
MBO Video LLC	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
McLeod USA (Paetec)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Mediacom	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Metcom Network Services, Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Metropolitan Fiber Systems of Dallas, Inc.	UTX
Mid Atlantic Broadband Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
MIDCONTINENT COMMUNICATIONS (DSL)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
National Exchange Carrier Association	Data License and Reseller Agreement
Navega	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
NaviSite, Inc.	Master Services and Reseller Agreement
NEON (RCN)(Sidera)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Nextlink/ XO	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Northwest Telephone/ Zayo	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Novatel	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Ntirety	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
NTS Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
One Communications-Connecticut Telephone	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
OnFiber (Qwest)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Optimum Lightpath, Inc. - Cablevision	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Oracle America, Inc	Software Updated License & Support for Service Contract # 4961155 (Oracle Database)
Paetec	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Pitney Bowes Business Insight	Address validation and geocode
Progress Telecom (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Prosoft	Supplies a pricing application for Germany
Qwest Communications Corp	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
RCN	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
RCN/ Con Ed	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Regulatory and Tax Consultants	Master Services Agreement
Reliance Globalcom/Yipes Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Salesforce.com, Inc.	License Agreement and related Order Forms
SERVICE ELECTRIC CABLE TV	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
SFR (France)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Shaw Business Solutions	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Sprint Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Sunesys, Inc.	Dark Fiber Indefeasible Right of Use Agreement and related Exhibits
SureWest	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Tata Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Telia International	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Telseon	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Telus Communications Inc.	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Telx San Francisco, LLC	Interconnection Facilities Licence and 1st Amendment
Time Warner Cable	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Time Warner Telecom (ex Xspedius)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
TRS REN TELCO	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
TW Telecom Holdings	Carrier Services Agreement and related Exhibits
US Carrier Telecom	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
US Signal Company	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
UUNET (Verizon)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
ValleyNet	Capacity Lease Agreement and related Terms & Conditions
Valucom, Inc	Database Agreement
Vanco US LLC	Managed Services Subcontract and related Amendments
Verio/ NTT Communications	Internet Access Agreement
Verizon	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Verosity	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Virtela	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Virtustream	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
VITAL	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Westcom (IPC)	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Williams (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Williams (Level 3)	UTX
WILTEL (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Windstream	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
XO Communications	UTX
XO Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
Ygnition	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Billstream	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Zayo Group LLC	Individual Service Orders, Change Orders and related Terms & Conditions of Orders

Schedule 2.1(d)**Security and Vendor Deposits, Prepayments and Refunds as of November 30, 2010**

Adequate Assurance Deposits	GC Entity	Amount
New England Fiber	Centrepath	\$ 500.00
SUNESYS	Centrepath	\$ 5,000.00
Timewarner	Centrepath	\$ 14,250.00
UUNET - Verizon	Centrepath	\$ 15,855.75
AboveNet	Global Capacity Group	\$ 7,440.77
Alpheus Communications, LP	Global Capacity Group	\$ 6,608.17
AT&T(0556)	Global Capacity Group	\$ 79.11
AT&T(1128)	Global Capacity Group	\$ 285.42
AT&T(2215)	Global Capacity Group	\$ 77.36
AT&T(2682)	Global Capacity Group	\$ 51,989.93
AT&T(4768)	Global Capacity Group	\$ 14,862.88
AT&T(6094)	Global Capacity Group	\$ 45.69
BCE Nexxia	Global Capacity Group	\$ 999.27
Bell Canada	Global Capacity Group	\$ 4,876.99
Cogent Communications	Global Capacity Group	\$ 2,367.22
Comcast(7514)	Global Capacity Group	\$ 366.60
Core 180, Inc.	Global Capacity Group	\$ 11,378.24
Covad	Global Capacity Group	\$ 1,777.95
Cox Communications (047206201)	Global Capacity Group	\$ 46.73
COX COMMUNICATIONS (048207301)	Global Capacity Group	\$ 165.53
Cox Communications (117617801)	Global Capacity Group	\$ 1,965.39
Cox Communications (167761102)	Global Capacity Group	\$ 115.08
Cox Communications (176422301)	Global Capacity Group	\$ 55.10
Cox Communications (178295801)	Global Capacity Group	\$ 115.27
Eventis Telecom	Global Capacity Group	\$ 2,307.25
Excel Commercial	Global Capacity Group	\$ 2,504.29
FiberNet Telecom	Global Capacity Group	\$ 1,200.00
FWR Communication Networks, Inc.	Global Capacity Group	\$ 3,689.08
Grande Communications	Global Capacity Group	\$ 2,189.82
Granite Telecom	Global Capacity Group	\$ 1,941.89
ICTX	Global Capacity Group	\$ 8,046.88
Innercity Fibernet, LLC	Global Capacity Group	\$ 3,350.00
Interfacing Company of TX	Global Capacity Group	\$ 3,875.00
ITS Direct	Global Capacity Group	\$ 79,321.96
Level3	Global Capacity Group	\$ 127,283.34
Lipan Telephone Co	Global Capacity Group	\$ 58.75

Adequate Assurance Deposits	GC Entity	Amount
One Communications-Connecticut Telephone	Global Capacity Group	\$ 325.67
Paetec	Global Capacity Group	\$ 8,440.99
Qwest-Circuits	Global Capacity Group	\$ 373,554.53
Qwest-DSL Seattle	Global Capacity Group	\$ 172.45
Road Runner LLC(Time Warner)	Global Capacity Group	\$ 541.48
Shaw Business Solutions	Global Capacity Group	\$ 518.39
Switch and Data	Global Capacity Group	\$ 8,178.91
T Mobile	Global Capacity Group	\$ 882.80
Time Warner Cable(5793)	Global Capacity Group	\$ 24.67
Time Warner Telecom(250852)	Global Capacity Group	\$ 10,580.16
Time Warner Telecom(296453)	Global Capacity Group	\$ 738.51
US Signal	Global Capacity Group	\$ 6,996.80
Verizon Business Fios(6173)	Global Capacity Group	\$ 552.60
Verizon Business(18007064/Y2649955)	Global Capacity Group	\$ 6,243.81
Verizon Business(20236151)	Global Capacity Group	\$ 215.48
Verizon Business(8050)	Global Capacity Group	\$ 2,113.33
Verizon Business(Y2109049)	Global Capacity Group	\$ 591.37
Verizon Online(0675)	Global Capacity Group	\$ 276.76
Verizon Online(4641)	Global Capacity Group	\$ 506.54
Verizon Online(4761)	Global Capacity Group	\$ 506.54
Verizon Southwest(0518)	Global Capacity Group	\$ 221.36
Via West	Global Capacity Group	\$ 13,788.70
Virterla	Global Capacity Group	\$ 2,449.20
Virtustream	Global Capacity Group	\$ 1,325.00
Westcom	Global Capacity Group	\$ 1,324.60
Wilshire Connection, LLC	Global Capacity Group	\$ 330.00
XO Communications	Global Capacity Group	\$ 31,132.66
Ygnition Networks, Inc.	Global Capacity Group	\$ 17,155.56
Yipes (Reliance Globalcom)	Global Capacity Group	\$ 3,990.63
Zayo Bandwidth	Global Capacity Group	\$ 910.85
RTC	Global Capacity Group	\$ 18,000.00
Unidentified 8/2	Global Capacity Group	\$ 324.00
AboveNet Communications Inc.	Global Capacity Direct	\$ 4,293.00
AT&T (Carrier)	Global Capacity Direct	\$ 780,963.35
AT&T (BellSouth)	Global Capacity Direct	\$ 74,970.99
AT&T (Pacific Bell)	Global Capacity Direct	\$ 32,152.59
AT&T (NJ)	Global Capacity Direct	\$ 31,888.31
AT&T (Ameritech CO)	Global Capacity Direct	\$ 27,820.47
AT&T (SW Bell)	Global Capacity Direct	\$ 5,406.78
AT&T (Nevada Bell)	Global Capacity Direct	\$ 463.55

Adequate Assurance Deposits	GC Entity	Amount
CenturyTel Fiber Company II,LLC	Global Capacity Direct	\$ 8,544.69
Chillicothe Telephone Company	Global Capacity Direct	\$ 52.22
Cincinnati Bell Telephone Company LLC.	Global Capacity Direct	\$ 35.07
Cogent Communications Inc.	Global Capacity Direct	\$ 40,591.25
Electric Lightwave, Inc.	Global Capacity Direct	\$ 9,403.85
Embarq (fka Sprint/Local)	Global Capacity Direct	\$ 17,796.66
FastTrack Communications, Inc.	Global Capacity Direct	\$ 3,052.31
FiberNet Telecom Group, Inc.	Global Capacity Direct	\$ 15,725.04
First Choice Coffee Services	Global Capacity Direct	\$ 1,209.67
Frontier Communications of Montana	Global Capacity Direct	\$ 8,957.94
Geneseo Telephone Co.	Global Capacity Direct	\$ 1,256.66
Global Crossing	Global Capacity Direct	\$ 44,343.75
INETWORKS Group, Inc	Global Capacity Direct	\$ 60.48
Interstate FiberNet Inc.	Global Capacity Direct	\$ 6,127.26
IRIS Networks	Global Capacity Direct	\$ 12,000.00
Level 3 - (Broadwing)	Global Capacity Direct	\$ 42,772.87
Level 3 (Williams)	Global Capacity Direct	\$ 36,632.33
Level 3 Communications	Global Capacity Direct	\$ 26,605.28
MBO Video LLC	Global Capacity Direct	\$ 1,450.31
Metcom Network Services, Inc.	Global Capacity Direct	\$ 2,375.00
Navega	Global Capacity Direct	\$ 25,327.78
NetWolves Network Services	Global Capacity Direct	\$ 31,772.39
NTS Communications	Global Capacity Direct	\$ 1,329.98
Optimum Lightpath, Inc. - Cablevision	Global Capacity Direct	\$ 7,101.38
Qwest	Global Capacity Direct	\$ 179,628.58
RCN Communications	Global Capacity Direct	\$ 5,537.89
Shaw Business Solutions	Global Capacity Direct	\$ 393.33
Sprint..	Global Capacity Direct	\$ 61,575.51
SureWest	Global Capacity Direct	\$ 308.63
Switch and Data	Global Capacity Direct	\$ 1,082.54
Teleglobe USA Inc.	Global Capacity Direct	\$ 1,150.00
Telus Communications Inc.	Global Capacity Direct	\$ 3,586.37
Time Warner Telecom	Global Capacity Direct	\$ 17,264.47
US Signal	Global Capacity Direct	\$ 1,917.94
Verizon Business - (MCI Worldcom)	Global Capacity Direct	\$ 506,280.75
Verizon RBOC (Wholesale)	Global Capacity Direct	\$ 69,841.59
Verosity Technology Partners	Global Capacity Direct	\$ 1,155.93
Windstream Communications	Global Capacity Direct	\$ 6,416.80
XO Communications Inc.	Global Capacity Direct	\$ 89,852.70
Zayo Bandwidth	Global Capacity Direct	\$ 6,072.76

Adequate Assurance Deposits	GC Entity	Amount
Northwest Telephone Inc.	Global Capacity Direct	\$ 3,719.29
Level 3 - (Looking Glass Networks)	Global Capacity Direct	\$ 19,164.38
IPC Network Services, Inc. (fka Westcom)	Global Capacity Direct	\$ 13,798.10
Mid-Atlantic Broadband Cooperative	Global Capacity Direct	\$ 9,595.00
Reliance Globalcom (fka Yipes Enterprise Service)	Global Capacity Direct	\$ 9,129.94
COX Communications, Inc. Access Billing	Global Capacity Direct	\$ 8,749.92
On Fiber Communications Inc.	Global Capacity Direct	\$ 7,005.00
supplier inactive - purchased	Global Capacity Direct	\$ 5,489.58
Hudson Valley DataNet, LLC	Global Capacity Direct	\$ 4,268.77
McLeod USA Co	Global Capacity Direct	\$ 3,402.87
Cavalier Telephone (Talk America)	Global Capacity Direct	\$ 3,157.96
Cavalier Telephone LLC (Elantic)	Global Capacity Direct	\$ 2,147.01
		\$ 3,234,083.87

Vendor Deposits	GC Entity	Description	Amount
ColoSpace, Inc.	Centrepath	Deposit - Last month's rent	\$ 7,520.00
UST-GEPT LP	Capital Growth Systems	Deposit on 500 W. Madison Office	\$ 25,000.00
Paeth Properties	Capital Growth Systems	Frontrunner office space deposit	\$ 12,600.00
Bell South	Global Capacity Direct	Security Deposit	\$ 68,000.00
Qwest	Global Capacity Direct	MK 8074103 Deposit Comcast Cable	\$ 1,600.00
Comed	Global Capacity Direct	Comed Security Deposit	\$ 221.67
Comed	Global Capacity Direct	Comed Security Deposit	\$ 1,955.00
Comed	Global Capacity Direct	Comed Security Deposit	\$ 443.58
Windstream	Global Capacity Direct	Security Deposit Requirement	\$ 21,759.53
NTS Communication	Global Capacity Direct	DSL Deposit Inv 061809	\$ 2,750.00
Century Tel	Global Capacity Direct	DSL Deposit requirement	\$ 25.00
Verizon	Global Capacity Direct	DSL Deposit Request	\$ 255.00
France Telecom	Global Capacity Direct	Cerner Security Deposit	\$ 13,580.02
SFR	Global Capacity Direct	SFR	\$ 10,428.28
Claro Deposit (Customer: Telus)	Global Capacity Direct	2x's MRC Carrier Deposits	\$ 17,300.00
	Total		\$ 183,438.08

Vendor Prepayments	GC Entity	Description	Amount
n/a	Centrepath	Customer: COC	\$ 153.61
Nortel	Centrepath	Inv #1935154; Customer: HUP	\$ 6,476.67
Pics	Centrepath	Inv #154012-12; Customer: Hannaford Snet	\$ 700.00
Wiltel - Level 3	Centrepath	Inv #14554089; Customer:	\$ 4,705.56
Wiltel - Level 3	Centrepath	Inv #14256573; Customer: Bayer	\$ 1,050.00
Wiltel - Level 3	Centrepath	Inv #13995188; Customer: CHOP	\$ 933.33
Wiltel - Level 3	Centrepath	INV #SL3610; Customer: Community	\$ -
Wiltel - Level 3	Centrepath	Inv #13598240; Customer: HUP	\$ -
Wiltel - Level 3	Centrepath	Inv# 15976551	14,116.67
Northern/First Funding	Capital Growth Systems	Directors and Officers	\$ 62,604.51
Schwartz Brothers Insurance	Capital Growth Systems	Crime Endorsement	\$ -
Schwartz Brothers Insurance	Capital Growth Systems	Travelers Prop Casualty Inv# 125446	\$ 12,535.13
Schwartz Brothers Insurance	Capital Growth Systems	Commercial Auto Ins Inv#125444	\$ 655.50
Schwartz Brothers Insurance	Capital Growth Systems	Worker's Compensation Inv# 125447	\$ 7,524.75
Schwartz Brothers Insurance	Capital Growth Systems	Travelers Prop Casualty Inv# 125448	\$ 2,341.88
Schwartz Brothers Insurance	Capital Growth Systems	Errors & Omissions Inv#125449	\$ 15,910.88
Schwartz Brothers Insurance	Capital Growth Systems	Travelers Prop Casualty Inv# 125445	\$ 2,623.13
Aztec America Bank	Capital Growth Systems	Annual Escrow Fee	\$ 208.33
Prepaid Tax Income Tax***	Global Capacity Direct	Tax Accrual	\$ 15,160.00
Valuecom	Global Capacity Direct	6/1/10 - 5/30/11	\$ 4,875.00
Oracle USA, Inc.	Global Capacity Direct	Dec 2009 - Nov 2010	\$ -
Pitney Bowles	Global Capacity Direct	MapMarker software Annual	\$ 4,285.42
Microsoft Corp	Global Capacity Direct	Map Point Software Annual	\$ 666.67
Oracle USA, Inc.	Global Capacity Direct	Oracle Support License thru 1/31/2011	\$ 4,261.12
McAfee Virus software	Global Capacity Direct	2/1/2010 - 1/31/2012	\$ 2,185.07
CSC invoice	Global Capacity Direct	Feb 2010 - Jan 2011	\$ 755.00
Center for Communications Mgmt July 2010 - June 2011 invoice	Global Capacity Direct	Semi Annual 6/30/2010 - 12/31/2010	\$ 1,916.25
First Hand Foundation	Global Capacity Direct	Golf Tournament Charity Support of Cerner COS (tournament occurs in May)	\$ 4,050.00

Vendor Prepayments	GC Entity	Description	Amount
Georesults	Global Capacity Direct	August - Dec 31 2010	\$ 3,645.83
Pitney Bowles credit corp	Global Capacity Direct	October through December Rent	\$ 444.88
Regulatory Tax Consultants	Global Capacity Direct	Set up fee	\$ 3,333.33
Regulatory Tax Consultants	Global Capacity Direct	Dec Invoice	\$ 6,000.00
Ntirety	Global Capacity Direct	Remote DB Maint - Oct - Dec	\$ 2,000.00
Center for Communications Mgmt July 2010 - June 2011 invoice	Global Capacity Direct	Semi Annual 12/31/2010 - 6/30/2011	\$ 11,497.50
Oracle USA, Inc.	Global Capacity Direct	Dec 2010 - Nov 2011	\$ 88,768.73
Glastonbury Rent	Global Capacity Direct	Glastonbury Dec Rent	\$ 5,621.52
Orbitz	Global Capacity Direct	01.12.2010	\$ 40,113.33
Thus - M4525	Magenta		\$ 1,116.48
Maporama - M4524	Magenta		\$ 8,373.56
Nildram - M4523	Magenta		\$ 46.52
BT - M4479	Magenta		\$ 23.26
Sage licence/S&M	Magenta		\$ 4,425.58
BUPA	Magenta		\$ 9,377.46
BUPA fees	Magenta		\$ 1,350.69
Maporama	Magenta		\$ 10,078.00
		Total	\$ 366,911.12

Schedule 2.1(e)

Intellectual Property

Copyrights, Copyright Applications and Copyright Licenses

No registered copyrights exist, however the Grantors routinely designate common law copyright ownership of written materials

Patents, Patent Applications and Patent Licenses

None

Trademarks, Trademark Applications and Trademark Licenses

Centrepath - Registration #3071795

CentrePath (Giant Loop) - Registration #2689084 & #2687210

CentrePath (Magellan) - Registration #29553234

Vanco Direct USA (Universal Access) - Registration #2465030 & #2467115

Intellectual Property

Full IP title of documentation, processes, methods, source code, datasets and databases, or other material pertaining to the support, delivery, research of new data derivatives and system capability/functionality for Global Capacity business and operations which support both Software and Circuit business for quoting, procurement, fulfilment, assurance, billing (finance), that are in both a production and development/research state/status.

The assets include but not limited to:

Lattis

CLM including but not limited to the Ridgian code, GC Price, OMP, all research code and datasets developed by Cornell University for GC.

netVESPA

netIPT

USX

Webquote

UIX/ACC

netDirect

PV+

CIAA

IPServices

Provision

Datawarehouse

GCPT

Sharepoint Sites

KM Matrix

WinCVS
Cerberus
netCool
Provisio
Remedy
Clarify
CCDB
Channel Assignment DB
Monolith
Billstream
Salesforce
UAMap / Mapmarker
Webservices and APIs
SMS gateway
Company related websites
CTM
Solarwinds
Oracle financials
Microsoft Great Plains
Citrix
Nagios
Cacti
PowerControl
 Weblogic
 Corba-COS
TL-1 probe
Crystal reports
LDAP
DNS
DHCP
Active Directory
Hyper-V
Checkpoint firewall
Nokia Firewall
Radius / ACE Security Software
Web servers
 IIS
 Apache
Portico

These being all products and datasets constituting the whole of the IP to Global Capacity's software and network optimisation applications, and operational support systems.

Domain Names

Domain Name	Expiry Date
2020technologies.net	28-Apr-11
20-20technologies.net	28-Apr-11
accesspricing.com	29-Mar-11
accesspricing.net	29-Mar-11
capitalgrowthsystems.com	12-Sep-11
cgsiholdings.com	20-Feb-11
cgsiholdings.net	20-Feb-11
connectivitysi.com	21-Sep-11
connectivitysi.net	21-Sep-11
csgglobal.com	18-Jun-11
csg-global.com	30-Jul-11
csgglobal.net	18-Jun-11
csg-global.net	30-Jul-11
gcprice.co.uk	16-Oct-11
gcprice.com	16-Oct-11
gcprice.eu	31-Oct-11
gcprice.net	16-Oct-11
globalcapacity.co.uk	24-Mar-11
globalcapacity.com	12-Dec-11
global-capacity.com	24-Mar-11
globalcapacity.eu	31-Mar-11
globalcapacity.net	5-Dec-11
globalcapacitycorporate.com	2-Feb-12
globalcapacity-corporate.com	10-Apr-11
globalcapacitycorporate.eu	28-Feb-11
globalcapacitycorporate.net	2-Feb-12
globalcapacitygroup.com	26-Jan-12
globalcapacitygroup.eu	31-Jan-12
globalcapacitygroup.net	26-Jan-12
ivno.co.uk	3-Jan-13
i-vno.co.uk	3-Jan-13
i-vno.com	3-Jan-12
ivno.eu	31-Jan-12
i-vno.eu	31-Jan-12
ivno.net	3-Jan-12
i-vno.net	3-Jan-12
magenta-logic.co.uk	19-Aug-11
magenta-logic.com	10-Jan-12
magentalogic.net	13-Mar-11
magenta-logic.net	13-Mar-11

Domain Name	Expiry Date
magentanetlogic.co.uk	4-Dec-12
magenta-netlogic.co.uk	4-Dec-12
magentanetlogic.com	20-Jun-11
magenta-netlogic.com	4-Dec-11
magenta-netlogic.eu	31-May-11
magentanetlogic.net	20-Jun-11
magentanetsolutions.com	19-May-11
magenta-netsolutions.com	19-May-11
magentanetsolutions.net	19-May-11
magenta-netsolutions.net	19-May-11
magenta-tc.co.uk	18-Jul-11
magenta-tc.com	18-Jul-11
magenta-telecommunication.co.uk	18-Jul-11
magenta-telecommunication.com	18-Jul-11
netipt.com	9-Jul-11
netvespa.co.uk	25-Mar-12
netvespa.com	8-Jul-11
netvespa.net	2-Aug-11
onemarketplaceonline.biz	5-Oct-11
onemarketplaceonline.co.uk	5-Oct-11
onemarketplaceonline.com	5-Oct-11
onemarketplaceonline.eu	31-Oct-11
onemarketplaceonline.net	5-Oct-11
globalcapacity.tel	24-Mar-11
global-capacity.tel	24-Mar-11

Schedule 2.1(g)

Excluded Actions

The right to avoidance actions related to voidable preference payments made by any of Sellers and all proceeds there from, except for avoidance actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business or the Purchased Assets. No avoidance actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Seller, as all such actions are included in the Purchased Assets, and Seller shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer's written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv).

See also Schedule 2.2(f)

Schedule 2.2(e)

Excluded Assets

Customer Contracts not being Assumed

CUSTOMER / CONTRACTING PARTY	CONTRACT
Greymane Connections Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Golibart Marketing, LTD.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
EOG Resources, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Source Communications	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Commercial State Bank	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Industry State Bank	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
First National Bank of Bellville	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Secure Cash Networks	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Splice Telecom	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
T-Netix Inc	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions
Talent Tree, Inc.	Individual Service Orders and Change Orders along with the relevant Master Services Agreement, Amendments, Exhibits and Schedules or Terms & Conditions

Vendor Contracts not being Assumed

VENDOR / CONTRACTING PARTY	CONTRACT
ABN AMRO	Agreement of Sublease
Augury	Master Services Agreement and related Statements of Work
Belgacom	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
British Telecommunications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
CarrierCom LP	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
C2C Fiber of Massachusetts, LLC (OnFiber)(Qwest)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
C3 Communications, Inc.	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Calpoint, LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cambrian Communications, LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Capital Telecommunications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cliff Bosely	Independent Marketing/Agent Agreement
CoreExpress, Inc. (Williams)(Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Cogent account GLOBALCA00008 only	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Consolidated Communication Telecom Services	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
CTSI, LLC	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
EPIK Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Fiber Technologies Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Fiberdyne Labs Inc	Master Consulting Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
FIBERSYSTEMS	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
GlassHouse Technologies	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Grande Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
GTE Telecom Incorporated (Verizon)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
ICG Communications (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
ITS Communications	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Looking Glass Networks, Inc. (Level 3)	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Mergent Investor Relations Services	Services Agreement
Netwolves	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
One Seven LLC	Consulting Services/Contractor Agreement
Optelcon	Consulting Services/Contractor Agreement
Orbitz LLC	Agreement of Sublease
PaceTel, Inc.	Consulting Services/Contractor Agreement
SDN Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Shareholder.com	Subscriber Agreement
Sigma Networks, Inc	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Southern California Edison Company	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Sphera Optical Networks	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Starvox	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders
Storm Telecommunications Limited	Master Agreement and related Amendments, Schedules, Exhibits, Service Orders and Change Orders

VENDOR / CONTRACTING PARTY	CONTRACT
TDS Telecom	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Time Communications	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
Triad Communications Group	Subcontractor Consulting Agreement
Verio, Inc.	NTT Verio Agent Agreement
VTX/Grande River	Individual Service Orders, Change Orders and related Terms & Conditions of Orders
David Bernahl	Independent Marketing Representative/Agent Agreement
Telemetrics Communications, Inc	Independent Marketing Representative/Agent Agreement
Thomas Hudson	Business Referral Agreement
Aequitas Capital Management, Inc	Advisory Services Agreement and related Amendments
Capstone Investments	Investment Banking Services Agreement and related Amendments
National Securities Corporation	Financial Advisory Agreement
Salzwedel Fianancial Communications	Independent Consulting and Services Agreement
Verizon	Commitment Discount Plan and related Amendments
Fragomen, Del Rey	Engagement as Special Counsel

Schedule 2.2(f)

Retained Causes of Action

- 1) Any and all claims arising under chapter 5 of the Bankruptcy Code and all similar actions under applicable law, including, but not limited to, preferences under Section 547 of the Bankruptcy Code, turnover Claims arising under Sections 542 or 543 of the Bankruptcy Code, and fraudulent transfers under Section 548 of the Bankruptcy Code (“Avoidance Actions”) and all proceeds there from, except for Avoidance Actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business, and designated by Buyer prior to the Closing. No Avoidance Actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer’s written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv).
- 2) Objections to Claims and Interests under the Plan, including any equitable subordination claims arising under Section 510 of the Bankruptcy Code or other applicable law (“Claim Objections”), provided that (A) Sellers are retaining solely for purposes of offset against Claims and Interests any other litigation, claims or Causes of Action, whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtors’ businesses, assets or operations or otherwise affecting the Debtors, including, without limitation, possible claims or Causes of Action against the following types of parties for the following types of claims: Possible claims against vendors, customers or suppliers for warranty, indemnity, back charge, set-off issues, overpayment or duplicate payment issues and collections, accounts receivables matters; Possible claims against utilities or other persons or parties for wrongful or improper termination of services to the Debtors; Possible claims for any breaches or defaults arising from the failure of any persons or parties to fully perform under contracts with the Debtors before the assumption or rejection of the subject contracts; Mechanic’s lien claims of the Debtors; Possible claims for deposits or other amounts owed by any Creditor, lessor, utility, supplier, vendor, factor or other person; Possible claims for damages or other relief against any party arising out of environmental, asbestos and product liability matters; Actions against insurance carriers relating to coverage, indemnity or other matters; Counterclaims and defenses relating to notes or other obligations; Possible claims against local, state and federal taxing authorities (including, without limitation, any claims for refunds of overpayments); Contract, tort, or equitable claims which may exist or subsequently arise; and (B) all such Claim Objections against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business or the Purchased Assets, and designated by Buyer prior to the Closing. No Claim Objections against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer’s written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv). For the avoidance of doubt, Buyers are acquiring as Purchased Assets and may determine to pursue or not in the ordinary course of business all such possible claims and Causes of Action.

- 3) Any claims of the Debtors arising under Section 362 of the Bankruptcy Code for violations of the automatic stay.

Schedule 2.3(c)

Prepetition Cure Amounts and Payment Schedule

Vendor Entity	Settlement Type	Total Pre-petition Cure Amount
AT&T - Undisputed	Settlement per separate order	\$ 4,226,777.00
AT&T - Dispute Settlement	Settlement per separate order	\$ 433,000.00
Verizon	Settlement per separate order	\$ 1,625,765.82
Level 3	Settlement per separate order	\$ 805,794.88
WILTEL	Settlement per Docket 369	\$ 56,431.83
Qwest	Settlement per separate order	\$ 718,976.05
BCE Nexxia	Settlement per separate order	\$ 71,495.42
AboveNet	Settlement per separate order	\$ 26,079.38
Time Warner Cable	Settlement per Docket 369	\$ 29,188.01
COX Communications	Settlement per Docket 369	\$ 18,259.77
Electric Lightwave, Inc.	Settlement per Docket 369	\$ 17,681.92
Cavalier Telephone (Intellifiber Networks)	Settlement per Docket 369	\$ 8,361.16
FastTrack Communications, Inc.	Settlement per Docket 369	\$ 5,229.53
Metcom Network Services, Inc.	Settlement per Docket 369	\$ 4,060.48
Geneseo Telephone Co.	Settlement per Docket 369	\$ 2,148.48
XO Communications Inc.	Settlement per Docket 369	\$ 212,026.01
Frontier	Settlement per Docket 369	\$ 201,252.65
Cogent Communications	Settlement per Docket 369	\$ 106,812.42
Reliance Globalcom (fka Yipes Enterprise Service)	Settlement per separate order	\$ 104,273.85
Global Crossing	Settlement per Docket 369	\$ 97,776.76
Zayo	Settlement per Docket 369	\$ 76,774.15
Navega	Settlement per Docket 369	\$ 71,251.61
CenturyTel Fiber Company II,LLC	Settlement per Docket 369	\$ 65,908.83
IPC Network Services, Inc. (fka Westcom)	Settlement per Docket 369	\$ 42,314.52
Ygnition Networks, Inc.	Settlement per Docket 369	\$ 39,217.67
RCN Communications	Settlement per Docket 369	\$ 37,824.57
Interfacing Company of TX	Settlement per Docket 369	\$ 34,875.00
Telus Communications Inc.	Settlement per Docket 369	\$ 31,121.33
Core 180, Inc.	Settlement per Docket 369	\$ 29,214.00
Mid-Atlantic Broadband Cooperative	Settlement per Docket 369	\$ 26,066.77
SUNESYS	Settlement per Docket 369	\$ 25,000.00
Paetec	Settlement per Docket 369	\$ 19,685.38
Optimum Lightpath, Inc. - Cablevision	Settlement per Docket 369	\$ 18,731.19

Vendor Entity	Settlement Type	Total Pre-petition Cure Amount
Virtela	Settlement per Docket 369	\$ 17,144.39
Teleglobe USA Inc. (TATA)	Settlement per Docket 369	\$ 16,200.00
FWR Communication Networks, Inc.	Settlement per Docket 369	\$ 11,118.00
Innercity Fibernet, LLC	Settlement per Docket 369	\$ 9,900.00
Eventis Telecom	Settlement per Docket 369	\$ 9,750.00
Verosity Technology Partners	Settlement per Docket 369	\$ 7,790.32
MBO Video LLC	Settlement per Docket 369	\$ 6,695.94
NTS Communications	Settlement per Docket 369	\$ 6,364.52
Granite Telecom	Settlement per Docket 369	\$ 6,158.71
Virtustream	Settlement per Docket 369	\$ 4,915.32
Shaw Business Solutions	Settlement per Docket 369	\$ 3,358.09
Comcast	Settlement per Docket 369	\$ 1,724.96
One Communications-Connecticut Telephone	Settlement per Docket 369	\$ 1,696.41
Cincinnati Bell Telephone Company LLC.	Settlement per Docket 369	\$ 1,352.42
SureWest	Settlement per Docket 369	\$ 933.90
Lipan Telephone Co	Settlement per Docket 369	\$ 225.83
Chillicothe Telephone Company	Settlement per Docket 369	\$ 122.70
CableOne, Inc.	Settlement per Docket 369	\$ 870.80
FirstDigital Telecom	Settlement per Docket 369	\$ 510.97
GTA	Settlement per Docket 369	\$ 210.29
BUCKEYE TELESYSTEM TELEPHONE	Settlement per Docket 369	\$ 52.06
SERVICE ELECTRIC CABLE TV	Settlement per Docket 369	\$ 42.55
MIDCONTINENT COMMUNICATIONS (DSL)	Settlement per Docket 369	\$ 29.58
Lighttower Fiber Networks	Settlement per Docket 369	\$ 2,945.16
Cable & Wireless Worldwide	Settlement per Docket 369	\$ 2,572.93
Insight	Settlement per Docket 369	\$ 22,469.46
SFR (France)	Settlement per Docket 369	\$ 9,356.01
Internap Network Services Corporation	Settlement per Docket 369	\$ 9,173.65
Interstate FiberNet Inc.	Settlement per Docket 369	\$ 3,703.43
Alpheus Communications, LP	Settlement per Docket 369	\$ 4,342.52
Windstream Communications	Settlement per Docket 369	\$ 588.22
Sprint	Settlement per Docket 369	\$ 50,725.15
Time Warner Telecom	Settlement per Docket 369	\$ 27,108.32
IRIS Networks	Settlement per Docket 369	\$ 8,516.13
US Signal	Settlement per Docket 369	\$ 5,971.69
Allied Communications, Inc.	Settlement per Docket 369	\$ 2,465.14
		\$ 9,546,482.03

Prepetition Executory Cure Amounts

Non-Real Estate Cure Schedule		
GC Entity	Vendor Name (or Contracting Party)	Cure Amount
2020 Technologies, Inc.	Geckotech	\$ 12,056.42
Centrepath	Colospace, Inc.	\$ 41,135.48
Centrepath	Continental Resources	\$ 1,051.49
Centrepath	TRS REN TELCO	\$ 1,518.37
Global Capacity Direct, LLC	Data Direct Technologies	\$ 1,470.00
Global Capacity Direct, LLC	Equinix, Inc.	\$ 12,740.30
Global Capacity Direct, LLC	Ntirety, Inc.	\$ 7,419.35
Global Capacity Group, Inc.	Geckotech	\$ 47.95
Global Capacity Group, Inc.	Klotron, Inc.	\$ 1,825.00
Global Capacity Group, Inc.	Regulatory and Tax Consultant, LLC	\$ 10,825.38
		\$ 90,089.74
Real Estate Cure Schedule - Schedule 2.3(c)		
GC Entity	Vendor Name (or Contracting Party)	Cure Amount
Centrepath	265 WINTER Street LLC	\$ 28,064.92
Centrepath	HOBBS BROOK MAN	\$ 633.76
Global Capacity Direct, LLC	G&L Glastonbury, LLC	\$ 4,155.53
		\$ 32,854.21
Total Executory Cures		\$ 122,943.95

*Cure language from Docket 369 is as follows: 100% of adequate assurance deposit applied to prepetition amount and amount of current monthly run-rate termed out over one-year with the balance settled upon exit.

**See also Assumed Liabilities in Schedule 5.13

Schedule 5.1

Organization

<u>Name of Grantor</u>	<u>Type of Organization (e.g. corporation, limited liability company, limited partnership)</u>	<u>Jurisdiction of Organization/Formation</u>	<u>Organizational Identification Number</u>
Capital Growth Systems, Inc.	Corporation	Florida	P99000086201
20/20 Technologies I, LLC	Limited Liability Company	Delaware	3617772
20/20 Technologies, Inc.	Corporation	Delaware	3852159
FNS 2007, Inc.	Corporation	Delaware	2311907
CentrePath, Inc.	Corporation	Delaware	3189723
Global Capacity Group, Inc.	Corporation	Texas	800036361
Magenta netlogic Limited	Corporation	UK	3534658
Nexvu Technologies, LLC	Limited Liability Company	Delaware	3497230
Capital Growth Acquisition, Inc.	Corporation	Delaware	4557281
Global Capacity Direct, LLC, f/k/a Vanco Direct USA, LLC	Limited Liability Company	Delaware	3922006
Global Capacity Holdco, LLC	Limited Liability Company	Delaware	4822597

Also see Schedule 11.1(h)(i) and 11.1(h)(ii) for list of State Jurisdictions by Entity

Schedule 5.3(a)

Conflicts

All contracts containing events of default for non-payment will be cured by Schedule 2.3(c) or due to bankruptcy which will be remedied by the Sale Order.

Schedule 5.3(b)

Required Consents

Transfer of Telecommunication Assets will require the necessary FCC and State regulatory approval as stated in Schedule 11.1(h)(ii).

Consents will need to be obtained related to the following contracts for Magenta netLogic, Ltd.

Salford University Enterprises
Virtela Communications
T-Systems
Marionette Ltd. f/k/a BP Insurance
COLT Telecommunications
Pro-Preis
Hopeweiser
Maporama
Informi GIS
Prosoft
Thus
Trident Payroll Services
Georeults

Schedule 5.5(c)

Real Property Leases – Non Monetary Defaults

Termination Letter for legacy space at 399 Wall Street, Unit B, Glendale Heights, IL related to the divested Frontrunner business was delivered to landlord on February 17, 2010. Terms of the early termination clause in the lease state that an early termination payment of \$27,000 was to be paid by July 15, 2010 and currently remains unpaid. No cure amount for this lease is reflected on Schedule 2.3(c) since Seller does not wish to retain the space and has delivered the notice of termination.

Schedule 5.5(f)

Real Property Unrelated to Business

None.

Schedule 5.6(a)

Intellectual Property Limitations

Three-Party Escrow Service Agreement with Iron Mountain for the Source Code of the related Intellectual Property of the business where the beneficiary was ACF CGS, LLC followed by Pivotal Global Capacity, LLC needs to be terminated now that the related loan has been paid in full.

See Customer License Agreements on Schedule 2.1(c)(i)

Three-Party Escrow Service Agreement with Iron Mountain and Comtel Assets, LP d/b/a Excel Telecommunications for the Escrow of the underlying circuit LOAs (Letters of Authorization) related to the installed base of circuits for Excel.

Strict Joint Order Escrow Trust and Agreement with Chicago Title Insurance Company and Comcast Corporate for the Escrow of the underlying circuit LOAs related to the installed base of circuits for Comcast.

Schedule 5.6(b)

Intellectual Property Grants

See Customer License Agreements on Schedule 2.1(c)(i)

Schedule 5.6(c)

Intellectual Property Rights Exclusions

Licensed Software in use in conjunction with the Seller's Intellectual Property is subject to the individual Terms and Conditions of their respective licenses.

Schedule 5.7(b)

Contracts – Breach or Defaults

With the exception of Change of Control contemplated by this Agreement, the filing for Bankruptcy and payment defaults, no other Contract Breaches or Defaults exist.

Schedule 5.7(c)

Contracts – Non-Monetary Defaults

See Schedule 5.7(b)

Schedule 5.8(a)

Employee Plans

Medical – Blue Cross Blue Shield of IL and MA

- Blue Choice Plan 72322
- BluePrint HMO Plan B011
- BluePrint PPO Plan 11112
- HMO Blue New England Enhanced
- Blue Care Elect Value Plus

Dental – MetLife

- 20/20 Technologies
- Centrepath
- Global Capacity Group
- Vanco

Vision – Beneficial Administration Co.

- 20/20 Technologies
- Centrepath
- Global Capacity Group
- Vanco Direct

STD/LTD – MetLife

- MetLife LTD Insurance
- MetLife STD Insurance

Basic Life/AD&D – MetLife

Voluntary Life/AD&D – MetLife

Spouse Life/AD&D – MetLife

Child Life – MetLife

Schedule 5.8(b)

Employee Plan Liabilities

None.

Schedule 5.9

Legal Proceedings

Vanco U S LLC vs Global Capacity US BC District of Delaware Case No 10-12302 Adv Proc No 10-53164

Schedule 5.10

Finders

None.

Schedule 5.12

Unfiled SEC Reports

As reported on Form 8-k on June 8, 2009:

On June 2, 2009, Capital Growth Systems, Inc.'s (the "Company") Board of Directors, voting together with a majority of the Company's Audit Committee members, ended its engagement of BDO Seidman, LLP ("BDO"), due to BDO's proposed timing of completion of the audit and its proposed fees associated therewith for the year ended December 31, 2008 (the "2008 Audit").

The Company engaged BDO on February 27, 2009 as its independent registered public accounting firm. During BDO's period of engagement, an issue was raised and discussed by certain of the members of the Board of Directors (but not the full Board or the full Audit Committee) and BDO regarding the Company's accounting treatment for a complex issue associated with the valuation methodology applied to certain embedded derivative features of certain debt instruments issued by the Company during 2007 and 2008 (the "Valuation Issue"). The Company's debt instruments are described more fully in its Current Report on Form 8-K filed with the SEC on November 20, 2008. The Valuation Issue does not impact cash of the Company and the Company is prepared to file its 2008 Form 10-K pending resolution of the appropriate methodology to be applied and certain other minor issues. The Company is unable to complete its 2008 Audit and therefore cannot file its 2008 Form 10-K until the Valuation Issue has been resolved. Resolution of the Valuation Issue could impact the Company's 2007 Form 10-K/A if the treatment results in a material change to the liabilities for warrants to purchase common stock and embedded derivatives of convertible debt instruments and preferred stock, as displayed therein. It should be noted that all of the applicable debt instruments that were issued in 2007 have since been either paid off or converted to Common Stock (with certain of the detached warrants still outstanding).

Subject to the disclosure regarding the Valuation Issue set forth above, during the Company's two most recent fiscal years ended December 31, 2008 and 2007 and through June 3, 2009 (the "Covered Period"), there were no disagreements with BDO on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of BDO, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report.

Schedule 5.13

Business Liabilities

Liabilities of Magenta netLogic as of December 31, 2010:

- Note Outstanding to Nigel Meacham - £3,335.21 or \$5,159.57 as converted
- Note Outstanding to Andrew Berquist - £9,589.51 or \$14,834.97 as converted

Schedule 5.15(b)

Satisfaction of Claims

None.

Schedule 5.15(d)

Encumbrances on Purchased Assets

None.

Schedule 5.15(h)

Transactions and Commitments Not in the Ordinary Course of Business

None.

Schedule 5.15(i)

Employee Agreements

The following employees have some form of U.S. based Employment Agreement with the Seller:

Patrick C. Shutt
George A. King
John P. Lodge, Jr.
Daniel Kardatzke

The following employees have some form of U.K. based Employment Agreement with the Seller:

Nigel Meacham
Phil Doyle
Elisabeth Simao
Andrew Berquist

The following employees have terms of Severance that were included in their original Offer Letter:

Michaela DiDonna

Schedule 5.17

Tax Matters

GC Entity	Priority Tax Liability	Cure Amount	
Global Capacity Group, Inc.	Q1 2010 Franchise Tax Accrual	\$ 12,500	
Global Capacity Group, Inc.	Q2 2010 Franchise Tax Accrual	\$ 12,500	
Global Capacity Group, Inc.	Penalties and Interest due to IRS for 2007 Withholding	\$ 75,408	
Global Capacity Direct, LLC	City of Chicago Telecom Tax Liability	\$ 209,939	(1)
Global Capacity Direct, LLC	Penalties and Interest for City of Chicago Telecom Tax	\$ 62,504	
Global Capacity Direct, LLC	Deferred Corporate Federal Income Tax Liabilities	\$ 49,000	
Global Capacity Direct, LLC	Deferred Corporate State Income Tax Liabilities	\$ 44,800	
Global Capacity Direct, LLC	Prepetition amounts due for Sales & Use Tax	\$ 211,507	
Global Capacity Direct, LLC	Federal TRS Fund	\$ 27,490	
		\$ 705,648	

(1) Have offsetting amount in A/R for amounts being passed through to customers

Schedule 5.18

Labor Matters

None.

Schedule 5.19(a)

Employees

Sellers to provide separately to Buyer

Schedule 5.19(b)

Independent Contractors

Contractor	Payment Structure	Description of Job or Projects Currently in Progress
UHK Optical - Shazi Habib	\$65/hour	Revenue and Service Delivery for Engineering Services related to AT&T
Augury Network Advisors - Brian Begely	\$24/hour	Pricing, Revenue and Service Delivery for Network Solutions
Augury Network Advisors - James Fitzgerald	\$65/hour	Pricing, Revenue and Service Delivery for Network Solutions
Addison Search - Cheryl Woods	\$43.60/hour	Revenue Assurance (pending Razorsite go-live)
Michael Page - Carmen Nunez	\$36.75/hour	Great Plains Integration
Michael Page - Ashley Crick	\$46.75/hour	Group AR & Billing support
Candelaria Benitez	\$25/hour	Integration
Constance Cucchiara-Bacchus	\$40/hour	Bankruptcy Cost Reduction & Human Resources
George O'loughlin	\$15/hour	Bankruptcy Compliance/Contract Abstracts
Law Office of Valerie Molinaro	\$100/hour	Outsourced Legal
Tanya Piletich	\$25/hour	GC International/Client Projects
Jonathan Wynne Evans	\$100/hour	Outsourced Legal (UK)
Ricardo Cunha	Commission Only	

Schedule 5.19(c)

Employment Limitations

Jonathan Wynne Evans has a Consulting Agreement with Capital Growth Systems, Inc. that calls for twelve month notice prior to termination of services.

Schedule 5.20

**Twenty Largest Customers and Critical Suppliers (excluding rents, benefits and professionals)
based on recent twelve month volume of sales and purchases compared to previous twelve month
history**

Twenty Largest Customers

Customer	Recent Twelve Months Ending 11/30/10	Prior Twelve Months Ending 11/30/09
Cerner	\$12,700,000	\$7,000,000
Comcast	\$3,900,000	\$4,000,000
Megapath	\$3,800,000	\$3,000,000
Excel	\$3,600,000	\$6,700,000
Bell Canada	\$3,500,000	\$5,200,000
TWC	\$2,000,000	\$3,200,000
AT&T	\$2,000,000	\$2,000,000
Telus	\$1,800,000	\$2,600,000
Verizon	\$1,500,000	\$4,400,000
Georgia Public Web, Inc	\$1,400,000	\$600,000
Time Warner Telecom	\$1,300,000	\$1,900,000
US Oncology	\$1,200,000	\$1,400,000
IBM	\$1,000,000	\$1,100,000
Virtela	\$900,000	\$1,000,000
Citizen's Telephone	\$700,000	\$800,000
Tata/Teleglobe	\$600,000	\$1,000,000
Reliance Globalcom	\$600,000	\$600,000
GMAC	\$600,000	\$1,800,000
AboveNet Communications	\$500,000	\$900,000
XO Communications	\$500,000	\$300,000

Twenty Largest Critical Suppliers

Vendor	Recent Twelve Months Ending 11/30/10	Prior Twelve Months Ending 11/30/09
AT&T	\$12,400,000	\$10,400,000
Verizon	\$7,400,000	\$6,000,000
Qwest	\$7,000,000	\$8,000,000
Level 3	\$3,000,000	\$4,800,000
XO Communications	\$1,400,000	\$1,600,000
ITS Direct	\$800,000	\$1,100,000
Global Crossing	\$600,000	\$800,000
Sprint	\$600,000	\$900,000
Time Warner Telecom	\$500,000	\$600,000
Cogent	\$400,000	\$800,000
Navega	\$300,000	\$100,000
Ygnition Networks, Inc.	\$200,000	\$300,000
Fibernet	\$200,000	\$200,000
Colospace	\$200,000	\$300,000
EMBARQ (CenturyTel)	\$200,000	\$200,000
WESTCOM	\$100,000	\$200,000
MBC	\$100,000	\$100,000

Schedule 10.2

Purchase Price Allocation

[To be completed prior to closing]

Schedule 11.1(h)(i)

List of Jurisdictions

Global Capacity Group, Inc.

Alabama	Certificate of Public Convenience and Necessity to Provide Local Exchange Service, Long Distance Interexchange Service and Long Distance Resale Service; Docket No. 30521, granted on October 22, 2007
Arizona	Not Registered
Arkansas	Certificate of Public Convenience and Necessity to Operate as a Reseller of Interexchange Telecommunications Services; Docket No. 08-125-U, granted on September 17, 2008
California	Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunication Services in Decision No. 05-09-055; Application No. 05-07-002; Utility ID No. U-6966-C, granted on September 30, 2005
Colorado	Registration as a Toll Reseller; Granted on August 27, 2008
Connecticut	Not Registered
Delaware	Not Registered
District of Columbia	Not Registered
Florida	Registered as an Intrastate Interexchange Telecommunications Company; Docket No. 080569-TI, granted on August 26, 2008 Certificate to Provide Competitive Local Exchange Telecommunications; Docket No. 080570-TX; Order No. PSC-08-0765-CO-TX, granted on November 18, 2008 (Certificate No. 8740).
Georgia	Certificate of Authority to Resell Interexchange Telecommunications Services; Docket No. 25589, Certificate No. R-1042, granted on December 18, 2007 Certificate of Authority to Provide Competitive Local Exchange Services Docket No. 25590, Certificate No. L-0439 granted on December 18, 2007
Hawaii	Certificate of Authority to Provide Competitive Resold and Facilities-Based/UNE Local Exchange and Interexchange Telecommunications Services within the State of Hawaii; Docket No. 2007-0229; Order No. 24175 granted on May 6, 2008

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Idaho	<p>Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange Telecommunication Services; Case No. GCG-T-07-01; Certificate No. 471; Order No. 30460 granted on November 6, 2007</p> <p>Intrastate Telecommunication Services; Effective July 23, 2007</p>
Illinois	<p>Certificate of Local and Interexchange Authority to Operate as a Resale and Facilities-Based Carrier of Telecommunication Services; Docket No. 08-0489 granted on September 24, 2008</p>
Indiana	<p>Certificate of Territorial Authority as a Toll Reseller, CTA No. 0808-3, effective August 21, 2008</p> <p>Certificate of Territorial Authority to Provide Facilities-Based Local Exchange, Bundled Resale of Local Exchange and Caller ID Services in Cause No. 43559 granted on October 8, 2008</p>
Iowa	<p>Certificate of Public Convenience and Necessity to Provide Local Exchange Service in Docket Nos. TCU-07-3 and WRU-07-17-3889 granted on September 5, 2007</p> <p>Telecommunication Service Provider; Granted on July 13, 2007</p>
Kansas	<p>Certificate of Convenience and Authority to Provide Switched Local Exchange and Exchange Access Services; Docket No. 09-GCGT-216-COC granted on September 17, 2009</p> <p>Certificate of Convenience and Authority to Provide Interexchange Services; Docket No. 09-GCGT-217-COC (Telecom-IXC) granted on September 17, 2008</p>
Kentucky	<p>Authority to Operate as a Long Distance Reseller (Filing ID No. TFS2007-00538) and Competitive Local Exchange Provider (Filing ID No. TFS2007-00537) granted on July 13, 2007</p>
Louisiana	<p>Certificate of Public Convenience and Necessity to Operate as a Reseller and Facilities Based/UNE Provider of Competitive Local Exchange and Interexchange Services in Docket No. S-30725 granted February 1, 2010</p>

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Maine	Authority to Provide UNE-P Replacement (i.e., Wholesale Advantage) Facilities-Based and Resold Competitive Local Exchange Service in the Service Area of Verizon-Maine and Intrastate Interexchange Service; Docket No. 2007-343 granted on September 12, 2007
Maryland	Not Registered
Massachusetts	Statement of Business Operations for Telecommunications Common Carriers Other than Pay-Telephone Provider; Granted on September 27, 2008
Michigan	Provide Basic Local Exchange Service; Case No. U-15379 effective November 8, 2007 Self registration as an Intrastate Telecommunications Service Provider (ITSP) providing Interexchange and Toll Resale Services granted on July 20, 2007
Minnesota	Not Registered
Mississippi	Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based/UNE Local Exchange & Interexchange Telecommunications Services; Docket No. 2007-UA-387 granted on June 8, 2008
Missouri	Not Registered
Montana	Registered as a Telecommunications Carrier and Service Provider. Last updated April 26, 2010. Not registered as a Service Provider.
Nebraska	Authority to Operate as a Reseller and Facilities-Based/UNE Common Carrier of Local Exchange and Interexchange Telecommunication Services; Application No. C-3840 granted on September 18, 2007
Nevada	Authority to Operate as a Competitive Supplier of Telecommunication Services; Docket No. 08-08022; CPC 2917 granted on December 17, 2008

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

New Hampshire	Authorization to Provide IntraLATA Toll Service in Authorization No. IXC 08-009-07 granted on August 29, 2007 Authorization to Provide Local Exchange Service in Authorization No. C08-008-07 granted on August 29, 2007
New Jersey	Authorized Resale Carrier; Granted on August 20, 2008 Authority to Provide Resold and Facilities-Based Unbundled Network Element Local Exchange Telecommunications Services; Docket No. TE08100934 granted on January 28, 2009
New Mexico	Certificate of Registration to Provide Competitive Local Exchange Telecommunications Services granted on October 16, 2007 Certificate of Registration to Provide Intrastate Long Distance Telecommunications Services granted on August 24, 2007
New York	Certificate of Public Convenience and Necessity for Authority to Provide all Forms of Intrastate Interexchange and Local Exchange Telecommunications Services Within New York State; Case No 08-C-0940 granted on November 15, 2008
North Carolina	Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Interexchange Telephone Service; Docket No. P-1466, Sub 0 granted on August 27, 2008 Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Local Exchange and Exchange Access Telephone Service in Docket No. P-1466, Sub 1 granted on October 30, 2008
North Dakota	Registered as an Interexchange and Local Service Provider; Effective July 20, 2007
Ohio	Not Registered
Oklahoma	Not Registered

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Oregon	Certificate of Authority to Provide Telecommunications Services and Classification as a Competitive Provider; Docket No. CP 1427; Order No. 08-482 granted on September 24, 2008
Pennsylvania	Competitive Local Exchange Carrier; Docket No. A-311446-F0002 and a Reseller Interexchange Carrier; Docket No. A-311446 granted on July 30, 2008
Rhode Island	Authority to Provide Local Telecommunications Services; Docket No. 3853 granted on August 22, 2007 (Certification allows Interexchange Capabilities)
South Carolina	Not Registered
South Dakota	Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services; Docket No. TC07-083 granted on September 26, 2007
Tennessee	Not Registered
Texas	Registered to Provide Interexchange Services; Certificate No. IX040017 granted April 21, 2004
Utah	Reseller of Long Distance Service; Granted on August 27, 2008
Vermont	Certificate of Public Good to Operate as a Provider of Telecommunications Services Including Service to the Local Exchange; Docket No. CPG No. 864-CR granted on August 28, 2007
Virginia	Not Registered
Washington	Registration as a Competitive Telecommunications Company; Docket No. UT-081502 granted on September 13, 2008
West Virginia	Provide Resold and Facilities-Based/UNE Local Exchange and Resold Interexchange Telecommunications Service throughout West Virginia; Case No. 07-1307-T-CN granted on October 2, 2007

Schedule 11.1(h)(i) (Continued)

Global Capacity Group, Inc.

Wisconsin	Certification as a Competitive Local Exchange Carrier and Alternate Telecommunications Utility; Docket No. 2281-NC-100 granted on August 3, 2007
Wyoming	Certificate of Public Convenience and Necessity to Offer and Provide Local Exchange Telecommunication Services in Docket No. 70125-1-TA-07 (Record No. 11354) granted on October 9, 2007 Interexchange Carrier Reseller; Docket No. 74673 granted on November 21, 2007

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Alabama	Certificate of Public Convenience and Necessity to Provide Local Exchange Service, Long Distance Resale Service and Resold Private Line Data Service; Docket No. 29778 granted on November 28, 2006
Arizona	Not Registered
Arkansas	Certificate of Public Convenience and Necessity to Provide Services as a Competing Local Exchange Carrier; Docket No. 05-100-U granted on October 23, 2007
California	Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunication Services; Decision No. 05-10-019; Application No. 05-07-004; Utility ID No. U-6969-C granted on October 11, 2005 Certificate of Public Convenience and Necessity to Offer Resold Local Exchange Telephone Services; Decision No. 5-11-008; Application No. 05-07-005 granted on November 18, 2005
Colorado	Not Registered
Connecticut	Certificate of Public Convenience and Necessity to Operate as a Reseller of Local Exchange and Intrastate Interexchange Telecommunications Services; Docket No. 05-08-06 granted on October 26, 2005

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Delaware	Certificate of Public Convenience and Necessity to Provide Local Exchange and Competitive Intrastate Telecommunications Services; Docket No. 05-388 granted on April 11, 2006
District of Columbia	Not Registered
Florida	Certificate to Provide Competitive Local Exchange Telecommunications Service; Docket No. 100273-TX granted on August 17, 2010 (Certificate No. 8792) Registration as Intrastate Interexchange Telecommunications; Docket No. 100291-TI granted on June 16, 2010
Georgia	Certificate of Authority to Resell Interexchange Telecommunications Services; Docket No. 20950 granted on June 22, 2005
Hawaii	Not Registered
Idaho	Not Registered
Illinois	Certificate of Authority to Provide Resold Local and Interexchange Telecommunications Services; Docket No. 05-0408 granted on September 28, 2005
Indiana	Certificate of Public Convenience and Necessity to Resell Local Exchange Telecommunication Services; Cause No. 42900 granted on October 26, 2005 Certificate of Territorial Authority to Resell Wide Area Telephone Service and/or Interexchange Intrastate Telecommunication Services; Cause No. 0508-2 granted on August 24, 2005
Iowa	Not Registered
Kansas	Not Registered

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Kentucky	Authority to Operate as a Long Distance Reseller (Filing ID No. TFS2005-00890) and Competitive Local Exchange Provider (Filing ID No. TFS2005-00889) granted on July 18, 2005
Louisiana	Authority to Operate as a Provider of CLEC and Long Distance Services; Docket No. S-28994 granted on January 17, 2006
Maine	Authority to Provide Local Exchange Service as a Reseller and Interexchange Service as a Reseller; Docket No. 2006-553 granted on November 7, 2006
Maryland	Authority to Provide Resold Local Exchange and Interexchange Telecommunications Services; Mail Log Nos. 97828, 98029 and 98141, TE-8114 granted on August 3, 2005
Massachusetts	Statement of Business Operations granted on August 3, 2005
Michigan	Not Registered
Minnesota	Not Registered
Mississippi	Certificate of Public Convenience and Necessity to Operate as a Long Distance and Local Exchange Telecommunications Provider in the State of Mississippi; Docket No. 2005-UA-0629 granted on June 6, 2006
Missouri	Not Registered
Montana	Registered Telecommunications Carrier granted on June 27, 2005 and updated June 18, 2010. Not registered as a Service Provider.
Nebraska	Authority to Operate as a Resale Carrier of Intrastate Interexchange and Local Exchange Telecommunication Services Cancelled Prior to Vanco Acquisition

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Nevada	Certificate of Public Convenience and Necessity Authorizing it to Operate as a Competitive Provider of Telecommunications Services providing Resold Intraexchange Services; Docket No. 05-6033 (CPC No. 2832) granted on August 24, 2005
New Hampshire	Authorization to Provide IntraLATA Toll Service; Authorization No. IXC 08-016-05 granted on September 1, 2005 Authorization to Provide Local Exchange Service; Authorization No. C08-008-05 granted on August 8, 2005
New Jersey	Authorized Resale Carrier; Granted on April 19, 2010
New Mexico	Certificate of Registration to Provide Intrastate Long Distance Telecommunications Services; Granted on September 2, 2005
New York	Certificate of Public Convenience and Necessity to Operate as a Reseller of Telephone Service; Case No. 05-C-0780 granted on July 12, 2005
North Carolina	Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Interexchange Telephone Service; Docket No. P-1364, Sub 0 granted on June 23, 2005 Certificate of Public Convenience and Necessity Authorizing the Provision of Intrastate Local Exchange and Exchange Access Telephone Service; Docket No. P-1364, Sub 1 granted on September 16, 2005
North Dakota	Not Registered
Ohio	Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Services; Case No. 05-943-TP-ACE; Certificate No. 90-933 granted on August 31, 2005
Oklahoma	Not Registered

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

Oregon	Certificate of Authority to Provide Telecommunications Services and Classification as a Competitive Provider; CP No. 1294; Order No. 05-962 granted on August 25, 2005
Pennsylvania	Certificate of Public Convenience to Operate as a Competitive Access Provider; Docket No. A-311393 granted on March 2, 2006
Rhode Island	Certificate of Authority to Operate as a Competitive Switchless Reseller; Docket No. 2262 (G20) granted on December 31, 2005
South Carolina	Certificate of Public Convenience and Necessity to Provide Resold Interexchange and Local Exchange Communication Services; Docket No. 2005-231-C; Order No. 2006-7 granted on January 13, 2006
South Dakota	Certificate to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota; Docket No TC-05-157 granted on October 3, 2006
Tennessee	Authority to Resell Local and Interexchange Long Distance Services; Docket No. 05-00306, Company ID: 128975, granted on August 14, 2006
Texas	Not Registered
Utah	If a reseller, not required to register in UT
Vermont	Certificate of Public Good to Operate as a Provider of Telecommunication Services; CPG No. 810-CR granted on September 30, 2005
Virginia	Certificate to Provide Local Exchange Telecommunications Services; Docket No. PUC-2005-00165 granted on March 10, 2006
Washington	Registered as a Telecom Provider - data services only 2005. Application Docket UT-050951

Schedule 11.1(h)(i) (Continued)

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC

West Virginia	Not Registered
Wisconsin	Certificate of Intrastate Authority to Resell Telecommunication Services and for a Certification as a Telecommunications Utility-Reseller; Docket No. 17001-TI-100 granted on November 9, 2005
Wyoming	Not Registered

Schedule 11.1(h)(ii)

Regulatory Approvals Required to be Obtained

Global Capacity Holdco, Inc. (“GCH”)

FCC	Transfer of Domestic & International 214 Licenses - FRN 0010294528 & FRN 0013207790
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Global Capacity Group, Inc. (“GCG”)

Alabama	Application to Transfer Assets from GCG to Buyer
Arkansas	Notice to Transfer Assets from GCG to Buyer
California	No Requirement
Colorado	Application to Transfer Assets from GCG to Buyer
Florida	Notice to Transfer Assets from GCG to Buyer
Georgia	Application to Transfer Assets from GCG to Buyer
Hawaii	Application to Transfer Assets from GCG to Buyer
Idaho	Notice to Transfer Assets from GCG to Buyer
Illinois	Notice to Transfer Assets from GCG to Buyer
Indiana	Application to Transfer Assets from GCG to Buyer
Iowa	Notice to Transfer Assets from GCG to Buyer
Kansas	Notice to Transfer Assets from GCG to Buyer
Kentucky	Notice to Transfer Assets from GCG to Buyer
Louisiana	Notice to Transfer Assets from GCG to Buyer
Maine	Notice to Transfer Assets from GCG to Buyer
Massachusetts	Notice to Transfer Assets from GCG to Buyer
Michigan	Notice to Transfer Assets from GCG to Buyer
Mississippi	Application to Transfer Assets from GCG to Buyer
Montana	Notice to Transfer Assets from GCG to Buyer

Schedule 11.1(h)(ii) (continued)

Regulatory Approvals Required to be Obtained

Global Capacity Group, Inc. (“GCG”)

Nebraska	Application to Transfer Assets from GCG to Buyer
Nevada	Application (if more than 10% revenue is generated in NV) to Transfer Assets from GCG to Buyer Notice to Transfer (if less than 10% revenue is generated in NV) Assets from GCG to Buyer
New Hampshire	Application to Transfer Assets from GCG to Buyer
New Jersey	Notice to Transfer Assets from GCG to Buyer
New Mexico	Notice to Transfer Assets from GCG to Buyer
New York	Application to Transfer Assets from GCG to Buyer
North Carolina	Notice to Transfer Assets from GCG to Buyer
North Dakota	Notice to Transfer Assets from GCG to Buyer
Oregon	Notice to Transfer Assets from GCG to Buyer
Pennsylvania	Application to Transfer Assets from GCG to Buyer
Rhode Island	Application to Transfer Assets from GCG to Buyer
South Dakota	Notice to Transfer Assets from GCG to Buyer
Texas	Notice to Transfer Assets from GCG to Buyer
Utah	No Requirement
Vermont	Notice to Transfer Assets from GCG to Buyer
Washington	Notice to Transfer Assets from GCG to Buyer
West Virginia	Application to Transfer Assets from GCG to Buyer
Wisconsin	Notice to Transfer Assets from GCG to Buyer
Wyoming	Notice to Transfer Assets from GCG to Buyer

Schedule 11.1(h)(ii) (continued)

Regulatory Approvals Required to be Obtained

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC (“GCD”)

Alabama	Application to Transfer Assets from GCD to Buyer
Arkansas	Notice to Transfer Assets from GCD to Buyer
California	No Requirement
Connecticut	Notice to Transfer Assets from GCD to Buyer
Delaware	Notice to Transfer Assets from GCD to Buyer
Florida	Notice to Transfer Assets from GCD to Buyer
Georgia	Application to Transfer Assets from GCD to Buyer
Illinois	Notice to Transfer Assets from GCD to Buyer
Indiana	Application to Transfer Assets from GCD to Buyer
Kentucky	Notice to Transfer Assets from GCD to Buyer
Louisiana	Notice to Transfer Assets from GCD to Buyer
Maine	Notice to Transfer Assets from GCD to Buyer
Maryland	Notice to Transfer Assets from GCD to Buyer
Massachusetts	Notice to Transfer Assets from GCD to Buyer
Mississippi	Application to Transfer Assets from GCD to Buyer
Montana	Notice to Transfer Assets from GCD to Buyer
Nevada	Application (if more than 10% revenue is generated in NV) to Transfer Assets from GCD to Buyer Notice to Transfer (if less than 10% revenue generated in NV) Assets from GCD to Buyer
New Hampshire	Application to Transfer Assets from GCD to Buyer

Schedule 11.1(h)(ii) (continued)

Regulatory Approvals Required to be Obtained

Global Capacity Direct, LLC f/k/a Vanco Direct USA, LLC (“GCD”)

New Jersey	Notice to Transfer Assets from GCD to Buyer
New Mexico	Notice to Transfer Assets from GCD to Buyer
New York	Application to Transfer Assets from GCD to Buyer
North Carolina	Notice to Transfer Assets from GCD to Buyer
Ohio	Application to Transfer Assets from GCD to Buyer
Oregon	Notice to Transfer Assets from GCD to Buyer
Pennsylvania	Application to Transfer Assets from GCD to Buyer
Rhode Island	Application to Transfer Assets from GCD to Buyer
South Carolina	Application to Transfer Assets from GCD to Buyer
South Dakota	Notice to Transfer Assets from GCD to Buyer
Tennessee	Application to Transfer Assets from GCD to Buyer
Utah	No Requirement
Vermont	Notice to Transfer Assets from GCD to Buyer
Virginia	No Requirement
Washington	Notice to Transfer Assets from GCD to Buyer
Wisconsin	Notice to Transfer Assets from GCD to Buyer

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT**(this “Agreement”), dated as of ~~October 18~~January 12, 2010 ~~2011~~, by and among Capital Growth Systems, Inc. d/b/a Global Capacity Group, Inc., a Florida corporation (the “Company”), the direct or indirect subsidiaries of the Company set forth on the signature pages hereto and their subsidiaries (together with the Company, each a “Seller,” and collectively, the “Sellers”) and Pivotal Global Capacity LLC (together with its successors, assigns and/or designees, the “Buyer”).

RECITALS

WHEREAS, Sellers are engaged in the business of providing telecom information and logistics solutions to a global client set consisting of systems integrators, telecommunications companies, and enterprise customers (collectively, the “Business”);

WHEREAS, on July 23, 2010 (the “Petition Date”), the Sellers commenced voluntary petitions for relief (the “Bankruptcy Cases”), pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. Section 101 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

WHEREAS, Sellers desire to sell to Buyer, and Buyer desires to purchase from Sellers, substantially all of the assets owned and used by Sellers in connection with the Business (other than those assets specifically excluded hereby), (or, in the event of an Alternative Transaction, as defined herein, to acquire equity interests of the Company or one or more of its subsidiaries), all on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement, as amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement. Capitalized terms not defined herein have the meanings set forth or used in the Bankruptcy Code or Plan.

“**Accounts Receivable**” has the meaning specified in Section 2.1(h).

“**Administrative Expense Claims**” shall have the meaning set forth in the Plan, as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers including the amount of Professional Fees.

“**Affiliate**,” means, with respect to any Person, any other Person which directly or indirectly Controls, is Controlled by or is under common Control with such Person.

“Agreement” has the meaning specified in the preamble.

“Alternative Transaction” means any sale, transfer, lease or other disposition, directly or indirectly, ~~including through an asset sale, stock sale, merger, recapitalization, reorganization or other similar transaction,~~ of any Purchased Assets or any substantial portion of the Business (or any agreement or understanding to do any of the foregoing) pursuant to any transaction or series of transactions to ~~a party or parties other than Buyer within twelve months from the date hereof, other than in the Ordinary Course of Business~~ Buyer, including through the purchase of assets of the Company or one or more of its subsidiaries or through the acquisition of Shares or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term “Purchased Assets” to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, as authorized by the Plan, to be effectuated prior to Closing.

“Assignment and Assumption Agreement” has the meaning specified in Section 3.1(e)(iii).

“Assumed Liabilities” has the meaning specified in Section 2.3.

“Auction” means the auction for the sale of the Purchased Assets contemplated by the Bidding Procedures Order.

~~**“Balance Sheet Amount”** shall mean an amount of the Purchase Price agreed to be attributable by Buyer and Sellers to fund the balance sheet of the Business at Closing.~~

“Bankruptcy Cases” has the meaning specified in the Recitals, and includes Adversary Proceedings by or against any of the Sellers.

“Bankruptcy Code” has the meaning specified in the Recitals.

“Bankruptcy Court” has the meaning specified in the Recitals.

“Bid Submission Deadline” means the deadline for submission of bids as established pursuant to the Bidding Procedures Order.

“Bidding Procedures Order” means the Order (a) Approving Procedures in Connection With Sale of Substantially All of the Debtors' Assets; (b) Scheduling Auction and Hearing to Consider Approval of Sale; (c) Approving Procedures Related to Assumption of Certain Executory Contracts and Unexpired Leases; (d) Approving Form and Manner of Notice Thereof; and (e) Granting Related Relief, entered by the Bankruptcy Court on August 24, 2010 (Docket No. 171), as modified by the Notice of Second Modification of Bidding Procedures filed on October 13, 2010 (Docket 316) and the Notice of Change of Auction Deadline Dates and Sale Hearing dated October 8, 2010 (Docket 305).

“**Bid Procedures**” means those Bid Procedures approved by the ~~Bid~~-Bidding Procedures Order.

“**Business**” has the meaning specified in the Recitals.

“**Business Day**” means any day which is not a Saturday, Sunday or a statutory holiday in the State of Delaware.

“**Buyer**” has the meaning specified in the preamble, acting in its capacity as successor Lenders.

“**Buyer Documents**” has the meaning specified in Section 6.2.

“**Closing**” has the meaning specified in Section 4.1.

“**Closing Cash Payment**” an amount, if any, in cash due and payable at Closing equal to the Purchase Price less the Credit Bid Amount less amounts attributable to Assumed Liabilities, which may be funded through the Sale Facility.

“**Closing Date**” has the meaning specified in Section 4.1.

“**COBRA**” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state law.

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

“**Company**” has the meaning specified in the preamble.

“**Company SEC Reports**” has the meaning specified in Section 5.12

“**Confirmation Order**” means the final, nonappealable order of the Bankruptcy Court that confirms the Plan, which has not been stayed or appealed (other than as consented to by Buyer in its sole discretion).

“**Contracts**” has the meaning specified in Section 2.1(c).

“**Control**” means the power, direct or indirect, to direct or cause the direction of the management and policies or a Person through voting securities, contract or otherwise.

“**Credit Bid Amount**” has the meaning set forth in Section 3.1(d)(i).

“**Creditor**” has the meaning set forth in 11 U.S.C. Section 101.

“**Cure Amount**” has the meaning specified in Section 2.3(c).

“**Cure Schedule**” has the meaning specified in Section 2.3(c).

“DIP Facility” means that certain Debtor in Possession Loan and Security Agreement dated as of July 23, 2010 by and among the Sellers, and the Buyer as successor in interest to the Tranche A DIP Lender and the Tranche B DIP Lenders effective December 15, 2010.

“DIP Facility Budget” is a working capital budget of the Debtors continuing through the Closing, and shall include all estimated revenue and expenses, including Pre-Closing Costs. Effective as of the Sale Closing, the DIP Facility will be increased by the Sale Facility to fund the Purchase Price, provided that Buyer may advance portions of the Sale Facility prior to the Closing in its sole discretion.

“DIP Lenders” means, ~~collectively, the Buyer as successor in interest to the Tranche A DIP Lender and the Tranche B DIP Lenders, or any successor or assign of such lender.~~

“DIP Order” means the final order of the Bankruptcy Court approving the DIP Facility as approved by the Court as Docket 125, the rights under which were assigned to Buyer as successor in interest to the DIP Lenders by order of the Court at Docket 512.

~~**“Disputed DIP Amounts”** means amounts alleged by the DIP Lenders to be due pursuant to the DIP Facility, in addition to the Existing DIP Payment Amounts, which amounts may be disputed by the Buyers, and which may be approved by the Court, after adjudication.~~

~~**“Disputed DIP Payment Date”** means the date 5 business days after any final, nonappealable order of the Court determining such Disputed DIP Amount.~~

“Employee Plans” has the meaning specified in Section 5.8(a).

“Employees” means all individuals, whether or not actively at work as of the date hereof, who are employed by one or more of the Sellers or their subsidiaries in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof and prior to the Closing to the extent Buyer approves the hire of such individuals after the date of this Agreement by prior written consent.

“Encumbrance” means any lien, claim, charge, security interest, encumbrance, mortgage, pledge, easement, option, right of first refusal, conditional sale or other title retention agreement, defect in title, covenant or other interests or restrictions of any kind.

“Environmental Law” means any Law relating to pollution or protection of human and occupational health and safety and the environment, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, handling, discharge, Release, threatened Release of or exposure to Hazardous Substances.

“Equipment” has the meaning specified in Section 2.1(a).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” has the meaning specified in Section 5.8(a).

“Exchange Act” means the Securities and Exchange Act of 1934, as amended.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Liabilities” has the meaning specified in Section 2.4.

“Executive Officer” means with respect to a corporation the president, chief executive officer, chief operating officer, chief financial officer; with respect to a partnership, the general partners, and; with respect to a limited liability company, the managers; or their functional equivalents.

~~**“Existing DIP”** means the Existing DIP Payment Amounts plus the Disputed DIP Amounts.~~

“Existing DIP Payment Amounts” means the outstanding principal drawn by Sellers and accrued and unpaid interest and all costs and fees pursuant to the DIP Facility ~~in an amount reasonably agreed by Buyer, estimated as of November 10, 2010 in on~~ the approximate amount of \$9.956 million plus an additional \$900,000 that may be drawn down by Sellers prior to the Replacement DIP Closing Date.

“FCC” means the United States Federal Communications Commission.

“Fee Claim” means a Claim by a Professional for compensation, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) (excluding any fees or expenses under sections 503(b)(3) or (4)) or 1103(a) of the Bankruptcy Code in connection with the Bankruptcy Cases. For the avoidance of doubt, fees or expenses sought under sections 503(b)(3) or (4) or payable under section 506(b) are not Fee Claims.

“Fee Payment Cap” means the sum of \$1,500,000 payable at the Closing (reduced by any pre-Closing discretionary advances, per Section 3.1(c) by Pivotal Global Capacity, LLC to be used to satisfy Fee Claims, U.S. Trustee Fees for the post-Closing period and the distributions made in connection with the Closing and Wind Down Budget obligations).

“Federal Telecommunications Laws” means the Communications Act of 1934, as amended, including amendments made by the Telecommunications Act of 1996, 47 U.S.C. Section 151 et seq., and the rules, regulations and orders of the FCC.

“Financial Statements” has the meaning specified in Section 5.12.

“GAAP” means generally accepted accounting principles in the United States as of the date hereof as applied in a manner consistent with the Sellers’ historical accounting policies.

“Governmental Body” means any foreign, federal, state, local or other governmental authority or regulatory body.

“Hazardous Substances” means any wastes, substances, products, pollutants or materials, whether solid, liquid or gaseous, that (i) is or contains asbestos, polychlorinated biphenyls, radioactive materials, oil, petroleum or any fraction thereof, (ii) requires removal, remediation or reporting under any Environmental Law, or is defined, listed or identified as a “contaminant”, “pollutant”, “toxic substance”, “toxic material”, “hazardous waste” or

“hazardous substance” or words of similar meaning and regulatory effect thereunder or (iii) is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is regulated as such by any Governmental Body under any Environmental Law.

~~“**Initial Overbid Amount Requirement**” has the meaning specified in the Bidding Procedures annexed as Exhibit A to the Bidding Procedures Order.~~

“**Intellectual Property**” has the meaning specified in Section 2.1(e).

“**Knowledge**” means the actual knowledge of the Person, including, in the case of a corporation, partnership or limited liability company, the knowledge attributed to such entity based on the actual knowledge of its Executive Officers after due investigation and inquiry.

“**Laws**” means any law, statute, ordinance, regulation, rule, code or rule of common law or otherwise of, or any order, judgment, injunction or decree issued, promulgated, enforced or entered by, any Governmental Body.

“**Lease Assignments**” has the meaning specified in Section 4.2(a)(iii).

“**Legal Proceeding**” means any judicial, administrative or arbitral actions, demands, suits, proceedings (public or private), audit or investigation by or before a Governmental Body or arbitral tribunal excluding any liquidation of claims.

“**Lenders**” means Buyer as successor, collectively, to the Pre-Petition Lenders and the DIP Lenders.

“**Liability**” means any debt, claim, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) and including all costs and expenses relating thereto.

“**Magenta**” means Magenta netLogic Limited, UK. For purposes of this Agreement, all assets and liabilities of Magenta shall be shown on the appropriate Schedules attached hereto, and shall be included in the Purchased Assets acquired under this Agreement at the election of the Buyer.

“**Material Adverse Change**” means a state of facts, event, change or effect with respect to the Business, Purchased Assets, the Assumed Liabilities or the enforceability of any Contract that results in a material adverse effect on the value of the Purchased Assets or the Business, taken as a whole (or, in the event of an Alternative Transaction, the value of the Shares), but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (a) changes in economic, regulatory or political conditions generally, and (b) the usual, customary or ordinary consequences of the filing by a debtor of a Bankruptcy Case contemplating a reorganization or liquidation of the debtor’s assets.

“**Mission Critical Vendors**” means the utility vendors and other critical vendors as identified on Schedule 2.3(c).

“**Modified Plan**” has the meaning specified in Section 7.5.

“**Non-Transferred Assets**” has the meaning specified in Section 2.5.

“**Non-Transferred Assets Documents**” means such bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of all of Sellers’ right, title and interest in the Non-Transferred Assets to Buyer.

“**Order**” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“**Ordinary Course of Business**” means the ordinary and usual course of normal day to day operations of the Business since the Petition Date.

“**Permits**” means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

“**Permitted Encumbrance**” means (i) any of those Encumbrances set forth on Schedule 1.1(a) and/or (ii) any Encumbrance that Buyer agrees in writing to accept.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Body.

“**Personal Property**” has the meaning specified in Section 2.1(a).

“**Petition Date**” has the meaning specified in the Recitals.

“**Plan**” has the meaning specified in Section 7.5.

“**Plan Effective Date**” means the first Business Day on which all conditions set forth in the Plan have been satisfied or waived (other than those that, by their terms, will be satisfied contemporaneously with or immediately upon the occurrence of the Plan Effective Date) and no stay of the effectiveness of the Confirmation Order is in effect.

“**Pre Closing Costs**” consists of operating expenses from the Petition Date through the Closing Date to the extent not covered by the Sellers’ operating income, in accordance with the ~~Replacement~~-DIP Facility Budget. Pre Closing Costs shall not duplicate any amounts that have previously been paid by the ~~Existing~~-DIP Facility.

“**Pre-Petition Facility**” means, collectively, the secured financing facilities provided by the Pre-Petition Lenders to Sellers before the Petition Date and all debentures issued to, and other documentation entered into with or in favor of, the Pre-Petition Lenders in connection therewith.

“Pre-Petition Lenders” means the [Buyer as successor to](#) holders of the August 2009 Debentures, the July 31, 2009 Debentures, the VPP 2009 Debentures, the November 2008 Debentures and the March 2008 Debentures (as each of those terms is defined in the Plan).

“Principal Amount” has the meaning specified in [Section 3.1\(a\)](#).

“Priority Claims” shall have the meaning set forth in the Plan as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers.

“Professional Fees” shall mean any fees to be paid by Debtors due from, paid to or on behalf of a professional (including Capstone Investments) as limited by the amount of the Purchase Price agreed to be attributable thereto by Buyers and Sellers.

“Purchase Price” has the meaning specified in [Section 3.1\(e\)3.1\(b\)](#).

“Purchased Assets” has the meaning specified in [Section 2.1](#).

“Qualified Bidder” means any Person considered to be a qualified bidder in the Auction pursuant to the Bidding Procedures Order.

“Real Property Leases” has the meaning specified in [Section 2.1\(b\)](#).

“Regulatory Approval Date” shall be the date 180 days following the Regulatory Filing Date.

“Regulatory Dates” shall be the Regulatory Filing Date and the Regulatory Approval Date.

“Regulatory Filing Date” shall be the date 14 days following the Sale Order Date.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration at, into or onto the environment, including movement or migration through or in the environment, whether sudden or non-sudden and whether accidental or non-accidental, or any release, emission or discharge as those terms are defined in any applicable Environmental Law.

“Retained Causes of Action” means [any and all claims and causes of action set forth on Schedule 2.2\(f\)](#).

~~**“Replacement DIP”** shall be~~ **“Sale Facility”** shall be an increase in the DIP Facility funded as of the Closing Date in an amount up to the portion of the Purchase Price and shall consist of the amount of the Existing DIP [Payment Amounts](#) and the amounts described in Section 3.1(b)(ii), equal to ~~Administrative Expense Claims (including Professional Fees), the Fee Payment Cap to pay Fee Claims, U.S. Trustee Fees incurred as a result of Closing disbursements and post-Closing, and~~ [Wind Down Budget \(including Pre-Closing Costs\)](#) in an aggregate amount not exceeding \$1,500,000, [Cure Amounts](#), ~~and Priority Claims~~ to the extent not paid from operating funds estimated at \$6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders, and [Priority Claims estimated at \\$706,000](#) as agreed by the

Buyer and Sellers in the Replacement DIP Sale Facility Budget, and \$1.5 million for the Balance Sheet Amount.

~~“Replacement DIP Sale Facility Budget” shall consist of estimated Administrative Expense Claims (including any Professional Fees), the Wind Down (including Pre-Closing Costs) Fee Payment Cap, Cure Amounts, and Priority Claims (including postpetition Taxes), and working capital to be funded for the Balance Sheet Amount. The Replacement DIP Budget is intended to be a working capital budget of the Sellers from the Replacement DIP Date through the Closing, and shall include all estimated income and expenses of Sellers therefore. Buyer and Sellers shall agree on the Replacement DIP Budget prior to the date of the Sale Hearing. The Sale Facility Budget is an increase in the DIP Facility Budget (which covered Administrative Expenses) to fund the Purchase Price at the Closing.~~

~~“Replacement DIP Date” has the meaning set forth in Section 3.1(a)(ii)(A).~~

~~“Retained Causes of Action” means any and all claims and causes of action set forth on Schedule 2.2(f).~~

“Sale Hearing” has the meaning specified in Section 7.3.

“Sale Motion” means the motion ~~to be~~ filed in the Bankruptcy Court by the Sellers ~~seeking, among other things, the approval of the Bidding Procedures Order and the Sale Order, (filed with the Bankruptcy Court on August 12, 2010 as Docket 115).~~

“Sale Order” has the meaning specified in Section 7.1.

“Sale Order Date” shall be the date 15 days after the Sale Order is entered, provided there is no stay or appeal.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller” and “Sellers” have the meanings specified in the preamble.

“Sellers Documents” has the meaning specified in Section 5.2.

“Shares” means all the issued and outstanding equity securities of the Company and, at the option of Buyer, one or more of the Sellers or other subsidiaries of the Company.

“State Regulatory Commission” means the agency, board, commission, department, or other instrumentality of a State, Territorial, District of Columbia, or Commonwealth government within or associated with the United States, having jurisdiction under that government’s laws to regulate the provision of intrastate telecommunications services.

“State Telecommunication Laws” means state statutes governing intrastate telecommunications in the States of the United States, the District of Columbia, and Territories and Commonwealths within or associated with the United States (the “States”), and the rules,

regulations, and orders of the State Regulatory Commissions applicable to such intrastate telecommunications.

“**Straddle Period**” has the meaning specified in Section 10.3.

“**Straddle Period Taxes**” has the meaning specified in Section 10.3.

“**Tax**” (and, with correlative meaning, “**Taxes**” and “**Taxable**”) means:

(i) any federal, state or local net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and

(ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax sharing arrangement or Tax indemnity agreement.

“**Tax Return**” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

“**Taxing Authority**” means any federal, state, local or foreign government, or any agency, instrumentality or employee thereof, charged with the administration of any Law relating to Taxes.

“**Telecommunications Laws**” means the Federal Telecommunications Laws and the State Telecommunications Laws.

“**Tranche A DIP Lender**” means Downtown CP-CGSY, LLC.

“**Tranche A Loan**” means the loan by Buyer as successor to the Tranche A DIP Lender pursuant to the DIP Facility.

“**Tranche B DIP Lenders**” means the Tranche B DIP Lenders party to the DIP Facility and any other Pre-Petition Lender and, with the consent of the existing Tranche B DIP Lenders, any other person that elects to become a Tranche B Lender under the DIP Facility.

“**Tranche B Loan**” means the loans by Buyer as successor to the Tranche B DIP Lenders pursuant to the DIP Facility.

“**Transfer Taxes**” means all sales (including bulk sales), use, transfer, value added, goods and services, filing, recording, ad valorem, privilege, documentary, gross receipts,

registration, conveyance, excise, license, stamp or similar Taxes and fees arising out of, in connection with or attributable to the transactions contemplated by this Agreement.

“**Transferred Employees**” has the meaning specified in Section 9.1.

“**Undisclosed Contract**” has the meaning specified in Section 2.1.

“**U.S. Trustee Fees**” means fees due to the U.S. Trustee by the Sellers, before or after the Closing, arising under 28 U.S.C. § 1930(a)(6) or otherwise, and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

“**WARN**” or “**WARN Act**” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state Law, and the rules and regulations thereunder.

“**Wind Down Budget**” has the meaning ascribed to such term in the Plan, as limited to the amount agreed to by Buyer and Sellers as part of the Purchase Price.

ARTICLE II

PURCHASE AND SALE

2.1 **Purchased Assets.** Upon the terms and subject to the conditions of this Agreement, effective as of the Closing Date, in exchange for the Purchase Price, Buyer shall purchase, acquire and accept out of the bankruptcy estate of the Sellers, and the Sellers on behalf of the Sellers’ estate shall sell, transfer, assign, convey and deliver, free and clear of all Encumbrances (other than any Permitted Encumbrances) to the extent permissible under Sections 363 and 365 of the Bankruptcy Code, to Buyer, on an as-is, where is basis, with no representations or warranties except as otherwise set forth herein, all of the Sellers’ right, title and interest in, to and under the Purchased Assets (which, in the event of an Alternative Transaction involving the acquisition by Buyer of any Shares, is effected through the transfer of all such Shares). “**Purchased Assets**” shall mean all assets, properties, interests and rights of the Sellers, other than the Excluded Assets, as of the Closing, used or useful in connection with or related to the Business, including:

(a) all tangible personal property of Sellers, including without limitation all machinery, equipment (including, without limitation, telecommunications equipment, computer equipment, routers, switches, concentrators, peripherals and related hardware) (“**Equipment**”), furniture, fixtures, leasehold improvements and all other fixed or tangible assets owned or leased under assumed Contracts, including, without limitation, those items described on Schedule 2.1(a) (collectively, the “**Personal Property**”), except those items to be retained by Sellers pursuant to Section 2.2 hereto;

(b) all real property leases and subleases as set forth in Schedule 2.1(b) (the “**Real Property Leases**”);

(c) all of Sellers’ rights in or under (i) all contracts with customers, and all software licenses, including without limitation those listed on Schedule 2.1(c)(i) and (ii) all telecommunication circuit contracts, and call contracts with vendors, software developers and others and the equipment leases listed on Schedule 2.1(c)(ii) (collectively, the “**Contracts**”) and

all claims and causes of action thereunder, provided that any contracts with customers not listed on Schedule 2.1(c)(i) shall be deemed included on that Schedule, unless specifically listed as excluded on Schedule 2.2(e);

(d) all of Sellers' rights in and to security and vendor deposits, prepayments and refunds existing with respect to the assumed and assigned Real Property Leases and Contracts, including, without limitation, those listed on Schedule 2.1(d);

(e) all of Sellers' intellectual property and intangible property, including without limitation all of Sellers' (1) trademarks, service marks, brand names, certification marks, collective marks, d/b/a's, domain names, logos, symbols, trade dress, product configurations, assumed names, fictitious names, Internet protocol addresses, trade names, indicia of origin, all applications and registrations for all of the foregoing, together with all goodwill associated with any of the foregoing and symbolized thereby, including all extensions, modifications and renewals or same; (2) inventions, discoveries and ideas, whether patentable or not, and all patents, registrations and applications therefore, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (3) confidential and proprietary information, trade secrets and know-how relating to the Business, including processes, schematics, databases, customer and other resource lists, formulae, drawings, prototypes, models, designs, and any confidential, secret or proprietary aspects of the Business, including, without limitation, marketing information, pricing arrangements with customers and suppliers or financial information relating to the Business; (4) all proprietary computer software of Sellers, including, without limitation, all computer programs, object code, source code, user interface, databases and documentation; (5) rights in works of authorship, including databases and other compilations of information; and (6) other intellectual property or proprietary rights owned by Sellers including without limitation those utilized in, developed in connection with or material to the Business, including without limitation any of the foregoing listed on Schedule 2.1(e) (collectively, the "Intellectual Property") and all Contracts pursuant to which any Seller is granted a license to, or any rights under, any Intellectual Property of any third Person and all Contracts pursuant to which any Seller grants to a third Person a license to, or any rights under, any Intellectual Property;

(f) all rights of setoff and recoupment with respect to the Assumed Liabilities;

(g) all actions under 11 U.S.C. Sections 544 through 550 (except as are specifically retained by the Sellers under Schedule 2.2(f)), and all counterclaims, offsets, defenses and denials against claims of creditors, and all rights and claims of Sellers, whether known or unknown, absolute or contingent, matured or unmatured, or otherwise, against third parties whether in tort, contract or otherwise, other than those relating to or arising under the Contracts (except with respect to all matters referred to in this subsection (g), to the extent necessary to setoff against claims of Creditors or to recover claims for damages against Sellers' estates, as set forth on Schedule 2.1(g), provided that such exception does not extend to actions against any and all (i) Mission Critical Vendors, (ii) counterparties to contracts assumed and assigned to Buyer under this Agreement, (iii) customers of the Business, and (iv) any other party determined by Buyer in its sole discretion to be important to the operation of the Business, and designated by Buyer prior to the Closing. No actions against (i), (ii), (iii) or (iv) defendants shall be pursued by Sellers, as all such actions are included in the Purchased Assets, and Sellers shall

consult with Buyer before pursuing any potential Retained Actions/Excluded Actions, and obtain Buyer's written confirmation that such action is not within the scope of (i), (ii), (iii) or (iv)).

(h) all accounts receivable, trade accounts and other amounts owed to any of the Sellers relating to, or arising in connection with the operation and conduct of, the Business (including overdue accounts receivable and all accounts receivable that have been billed by Sellers in advance for services or products that have not yet been provided prior to the Closing Date) and any other rights of any of the Sellers to payment from any other Seller, any subsidiary of any Seller or any third party and the full benefit of all security for such accounts or rights to payment, including, together with any and all proceeds of any of the foregoing (collectively, the "Accounts Receivable");

(i) all cash and cash equivalents whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts and including any cash collateral that is collateralizing any letters of credit, or obligation with respect thereto, assumed by the Buyer, but excluding any cash tendered as part of the Purchase Price, including all net operating income (in whatever form) to the extent not used in accordance with final orders entered by the Bankruptcy Court or in accordance with the DIP Facility Budget, prior to the Closing;

(j) at the option of Buyer, in its sole discretion, all ~~shares of capital stock or other equity interests in any Seller or any subsidiary of any Seller~~ Shares, including, without limitation, all shares of the capital stock of Magenta, whether or not an this Agreement is effected through an Alternative Transaction;

(k) all of Sellers' books of account, records, files (including those relating to customers and carriers), customer lists, invoices and similar financial books, records and information, employment records and files, and Sellers' engineering and other technical ~~books~~ books, papers, files and records (including all data and other information stored on discs, tapes, including back up tapes, or other media) relating to the Business, provided that Sellers shall have the right to make copies of such books and records to the extent Sellers determine that they are necessary to enable Sellers to wind down Sellers' estates and/or are otherwise required for legal or regulatory reasons;

(l) all rights to enforce any and all agreements between Sellers and their respective employees relating to noncompetition, invention assignment, proprietary information and/or confidentiality; except that Seller shall retain any cause of action against any Employee for damages to the extent of loss or damage suffered by the Sellers or their estates on account of employee conduct occurring prior to the Closing Date;

(m) all other rights of Sellers relating to the Business, including, without limitation, all goodwill relating to the Business;

(n) all Permits and licenses- ~~other than non-transferrable Permits and licenses which are not material to the Business (as approved by Buyer in its sole discretion)~~ as determined and approved by Buyer in its sole discretion;

(o) all telephone, fax numbers, carrier identification codes, other than those not transferable which are not material to the Business ~~(as approved by Buyer in its sole discretion)~~ as determined and approved by Buyer in its sole discretion;

(p) all websites;

(q) all rights under warranties relating to the Purchased Assets; and

(r) all proceeds of insurance arising from damage to, destruction of or loss relating to the Purchased Assets or covering claims, if any, for which Buyer may have successor liability, provided, however, with respect to any successor liability claims, such proceeds shall be used solely either to satisfy such liability directly or, if Buyer or the Sellers have already satisfied such a claim, to reimburse Buyer or the Sellers to the extent of such satisfaction.

(In the event of an Alternative Transaction, the enumeration of items in 2.1(a)-(r) above shall, with respect to any entity whose Shares are being acquired, refer to such entity's right, title or interest therein, it being the intent that Buyer shall acquire such assets indirectly through the purchase of such Shares.)

Notwithstanding anything to the contrary contained herein, (x) Sellers may at any time up to the date of the Sale Hearing, supplement Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, to add any contract or lease that was not previously listed thereon, in which case such contract or lease shall be, subject to the consent of Buyer in its sole discretion, as applicable, a Purchased Asset, or (y) Buyer may, in its sole discretion, at any time prior to the Closing remove from Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, any contract or lease listed thereon, in which case such contract or lease shall be an Excluded Asset. In the case of any contract or lease the existence of which was not disclosed to Buyer in reasonable detail prior to the date hereof (an "Undisclosed Contract"), Buyer may add such Undisclosed Contract to Schedule 2.1(b), Schedule 2.1(c)(i) or Schedule 2.1(c)(ii), as applicable, at any time prior to the date of the Sale Hearing, and Sellers shall take all actions desirable or necessary including filing any necessary or desirable motions or applications and obtaining any appropriate Orders from the Bankruptcy Court, in order to effectuate the assignment of such Undisclosed Contract to Buyer. It is the intention of the parties that all assets of Sellers other than Excluded Assets are to be included in the sale hereunder. Accordingly, if any asset of Sellers, which is not an Excluded Asset, is not transferred to Buyer at Closing, in the sole discretion of Buyer, Sellers shall cause it to be transferred to Buyer for no additional consideration, subject to Bankruptcy Court approval including any requirement to pay any Cure Amount (which Cure Amount shall be paid by Buyer if Buyer elects to acquire such asset but without any increase in the Purchase Price, unless Buyer determines, in its sole discretion, to increase the Purchase Price therefor), including assuming and assigning any executory contracts and unexpired leases. At Buyer's option, Sellers shall cause, prior to the Closing Date, any or all assets of Magenta to be transferred to Sellers by Magenta.

2.2 **Excluded Assets.** Any provision herein to the contrary notwithstanding, the Purchased Assets shall not include any of the following assets (the "Excluded Assets"):

(a) the Purchase Price;

(b) at the option of Buyer, in its sole discretion, any and all ~~shares~~ Shares of the capital stock or any equity interest of any of the Sellers or any of their subsidiaries;

(c) any: (i) confidential personnel and medical records pertaining to any Employee to the extent such records may not be transferred to Buyer pursuant to applicable Law; (ii) other books and records that the Sellers are required by Law to retain including, without limitation, Tax Returns, taxpayer and other identification numbers, financial statements and corporate or other entity filings provided, that Buyer shall have the right to make copies of any portions of such retained books and records to the extent that such portions relate to the Business or any of the Purchased Assets; (iii) any information management systems of the Sellers, other than those used in or useful in connection with or related to the Business; and (iv) (except in the event of an Alternative Transaction) minute books, stock ledgers, equity books, equity ledgers, equity certificates and stock certificates of any Seller or any of its Subsidiaries which do not constitute Purchased Assets; in each case (i)-(iv) above, subject to Buyer's ability to make copies thereof as Buyer deems necessary and proper;

(d) assets of any Employee Plan, which shall be terminated or disposed of prior to the Closing if an Alternative Transaction is implemented;

(e) those assets described on Schedule 2.2(e), and any Contracts and Real Property Leases not listed on Schedule 2.1(b), 2.1(c)(ii) as specifically assumed, all of which assets shall be terminated or disposed of prior to the Closing if an Alternative Transaction is implemented; Buyer may, in its sole discretion, at any time prior to Closing, move Personal Property, Real Property Leases and Contracts from Schedules 2.1(a), 2.1(b) and 2.1(c)(i) and (ii) to Schedule 2.2(e) after further due diligence; provided, however, that so moving any Personal Property, Real Property Leases or Contracts shall not result in any reduction of the Purchase Price; and

(f) the Retained Causes of Action set forth on Schedule 2.2(f), subject to the restrictions in Section 2.1(g).

2.3 **Assumed Liabilities.** Upon the terms and subject to the conditions of this Agreement, effective as of the Closing Date, Buyer shall assume and agree to discharge the following, and only the following, Liabilities of Sellers (the "Assumed Liabilities"):

(a) all Liabilities relating to the operation of the Business acquired hereunder that arise from events, facts or circumstances that occur on or after the Closing;

(b) all of Sellers' obligations under the Contracts and the Real Property Leases acquired hereunder and obligations to pay Taxes of Governmental Units, ~~which are to be performed or~~ which accrue after the Closing;

(c) all of Sellers' (a) accounts payable and other obligations under the Contracts and the Real Property Leases assumed and assigned hereunder and (b) obligations to pay Taxes of Governmental Units, in each case that are current, accrued and unbilled obligations incurred postpetition, which Buyer will pay when invoiced and due in the ordinary course after Closing;

(d) ~~(e)~~all amounts payable under Section 365 of the Bankruptcy Code to cure monetary defaults under the Contracts and the Real Property Leases acquired hereunder in accordance with the Assignment Notices described in Section 7.3 herein between Sellers and the counterparty to such Contracts and Real Property Leases or as otherwise provided in an Order of the Bankruptcy Court, to the extent not previously paid by Seller as an Administrative Expense; provided, however, that Buyer's assumption of each Contract and each Real Property Lease is predicated upon the Cure Amount not exceeding the amount set forth on Schedule 2.3(c) (the "Cure Schedule") or such greater amount as the Bankruptcy Court shall determine is the Cure Amount for each Contract and Real Property Lease to be assumed by Buyer in accordance with such Assignment Notice, subject to Buyer's right to reject any of such Contracts or Real Property Leases prior to the Closing Date and further subject to Buyer's ability, in its sole discretion, to increase the Purchase Price for any additional Cure ~~Amounts~~ Amount which may be required prior to the Closing Date (collectively, the "Cure Amount").

For the avoidance of doubt, the parties agree that (i) ~~any~~ the portion of the Cure Amount ~~or other amounts~~ payable on the Closing Date, ~~shall be payable as paid by the Sellers as an Administrative Expense (but separately allocated outside the aggregate Administrative Expense limit in the Purchase Price), using part of the Closing Cash Payment at Closing and first using any funds deemed not to collateralize the Pre-Petition Facility,~~ (ii) Buyer's assumption of the Assumed Liabilities shall be without duplication of the expenses paid by Buyer as Pre-Closing Costs or otherwise advanced as part of the ~~Replacement Sale Facility or DIP Facility,~~ and (iii) any Closing Cash Payments shall be without duplication of amounts advanced as part of the ~~Replacement~~ DIP Facility.

2.4 **Excluded Liabilities.** Notwithstanding anything to the contrary contained in this Agreement or otherwise, Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of Sellers, direct or indirect, known or unknown, absolute or contingent, not expressly assumed by Buyer pursuant to Section 2.3 (all such liabilities and obligations not being assumed being herein called the "Excluded Liabilities"). Without limiting the generality of the foregoing, all of the following shall be Excluded Liabilities for purposes of this Agreement:

(a) all Liabilities of the Sellers relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets;

(b) all accounts payable arising from the Business (including without limitation those arising under Contracts and Real Property Leases) which accrue or arise prior to the Closing Date and which remain unpaid on the Closing Date, except insofar as they ~~pertain to services rendered or goods delivered to Buyer on or after the Closing Date and any obligation for such services or goods shall be treated as Assumed Liabilities and discharged by Buyer, and except also, the obligation to pay any Cure Amount with respect to the Contracts and Real Property Leases assumed by Buyer,~~ are within 2.3(c);

(c) claims of Creditors not expressly assumed hereunder;

(d) all Liabilities with respect to all Employee Plans, policies, agreements and arrangements of the Sellers and their Affiliates, including all Employee Plans, and any Liability

to or in respect of, or arising out of or in connection with, the employment by any of the Sellers or cessation of employment with any of the Sellers of any Employees or independent contractors or former employees or independent contractors of any of the Sellers, including any severance obligations that arise on or prior to the Closing Date and any WARN liability associated with the termination of Employees;

(e) any and all federal or state regulatory charges or assessments in respect of operations of Sellers prior to the Closing Date, including but not limited to all universal service fund charges, federal excise taxes, FCC charges for network access, local number portability charges, telecommunications relay service charges, local communications taxes, state gross receipts taxes, state utility privilege taxes and 911 fees, other than those paid by the allocation to Priority Claims of a portion of the Purchase Price;

(f) all Taxes payable or that become payable by Sellers arising from the conduct of the Business prior to the Closing Date other than those paid by the allocation to Priority Claims of a portion of the Purchase Price (which shall encompass Taxes incurred postpetition in the course of operation of the Business, for purposes of this Agreement). All sales Taxes and universal service charges collected by Buyer attributable to a sale that occurred prior to the Closing Date shall be remitted to the appropriate Taxing Authority or universal service administrative company for credit to Sellers' account;

(g) any debt of the Sellers, except to the extent otherwise expressly included in Assumed Liabilities; ~~and~~

(h) any Claim or Interest or any kind or nature in any of the Shares;

(i) ~~(H)~~any liabilities or obligations of Sellers arising prior to the Closing Date, except as expressly assumed by Buyer in writing, including any obligations to any holders of Claims and/or Interests in the Sellers or affiliates thereof.

(In the event of an Alternative Transaction, the enumeration of items in 2.4(a)-(i) above shall, with respect to any entity whose Shares are being acquired, refer to such entity's liabilities and shall require the termination of such liabilities as a condition of Closing, it being the intent that Buyer shall acquire such Shares of such entity only if such liabilities of such entity have been discharged or otherwise disposed of.)

For the avoidance of doubt, amounts paid by Buyer on behalf of the Existing DIP Payment Amounts, Pre Closing Expenses, Administrative Expense Claims, ~~Priority Claims and including Professional Fees-, and Priority Claims~~ at Closing shall be in the nature of payment of the Purchase Price and shall be allocated by Sellers as set forth in the Plan, with Administrative Expense Claims and the Cure Amount first using any funds deemed not to collateralize the Pre-Petition Facility. No presumption shall arise as to the assumption by Buyer of any liabilities related to any of Administrative Expense Claims, ~~Priority Claims or including Professional Fees or Priority Claims~~ by virtue of payments of amounts allocated by Sellers to such categories.

2.5 Non-Transferred Assets.

~~(a)~~(a) Notwithstanding anything in this Agreement to the contrary, the parties agree that, to the extent that as of the Closing certain of the Purchased Assets cannot be transferred to Buyer (i) pending Buyer obtaining the requisite telecommunications regulatory authorizations from State and Federal regulatory agencies and/or consent of State and Federal regulatory agencies to the transfer of such Purchased Assets or (ii) if an attempted assignment of any Contract or Real Property Lease, without the consent of any other Person that is a party thereto, would constitute a breach thereof or in any way negatively affect the rights of Buyer (unless the restrictions on assignment would be rendered ineffective pursuant to sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended), as the assignee of such Contract or Real Property Lease, as the case may be, thereunder (or, in the event of an Alternative Transaction, if the acquisition by Buyer of any Shares or other equity interests of Company or one or more subsidiaries is not consummated because certain Transferred Assets cannot be owned by Buyer or by entities whose Shares or other equity interests are owned by Buyer), Sellers shall retain title to such assets (the “Non-Transferred Assets”) and any Assumed Liabilities related to such assets, pending receipt of such authorizations and consents, and shall hold and treat such assets in accordance with the terms set forth in a management agreement to be agreed upon between Buyer and Sellers. Upon receipt from time to time of any such necessary consents, such Non-Transferred Assets as are subject to the consents so received, shall be transferred to Buyer pursuant to subsection 2.5(b) below, and Buyer shall assume all related Assumed Liabilities- (or, in the event of an Alternative Transaction, the applicable Shares or other equity interests of the Company or one or more of its subsidiaries shall be transferred to Buyer or otherwise caused to be acquired by Buyer by direct purchase of such equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state).

(b) Subject to and in accordance with the terms and conditions of this Agreement and without limiting the obligations of the parties, it is hereby acknowledged, confirmed and agreed by the parties that each of the parties will execute, deliver, or cause to be delivered the Non-Transferred Asset Documents upon receipt of the consents and approvals, if any, referred to in clauses 2.5(a)(i) and 2.5(a)(ii) above. Upon delivery of such duly executed Non-Transferred Asset Documents, the requirements of Article XI below shall be deemed to be satisfied as if such Non-Transferred Assets and related Assumed Liabilities had been transferred to and assumed by Buyer at the Closing, and the Purchase Price will not be affected by Non-Transferred Assets.

2.6 **Prorations at Closing.** All items of income, expense, charges, fees and costs covered by this Agreement, to the extent earned, incurred or accrued for a period that starts before and ends after the Closing Date, shall be pro-rated as of the Closing Date with Sellers receiving or responsible for the pro-rated amount for the period before the Closing Date and Buyer receiving or responsible for the pro-rated amount from and after the Closing Date. Such pro-rated amounts shall be determined at Closing or, if it is not possible to calculate them at that time because of insufficient information, promptly after such information becomes available. To the extent that either party requests a post-closing reconciliation of pro-rations at Closing, such reconciliation shall be made within 45 days after Closing.

2.7 **Sellers' Access to Records and Personnel.** Sellers, so long as any of them remain a debtor in a case under any chapter of the Bankruptcy Code, shall, at reasonable times and on reasonable notice, have access to all records and Transferred Employees for all actions that are reasonably necessary or reasonably proper to administer such case under the Bankruptcy Code.

ARTICLE III **PURCHASE PRICE**

3.1 **Purchase Price.**

(a) Each of the parties hereby acknowledges, confirms and agrees that the Debtors have incurred indebtedness under the DIP Facility.

(i) Buyer agrees that from ~~the date five (5) Business Days~~ subject to the terms and conditions of the DIP Facility, it will continue to fund the DIP Facility following entry of the Sale Order to the Closing Date ~~the Buyer shall provide the Replacement DIP~~ as agreed by Buyer and Seller in the ~~Replacement DIP~~ Facility Budget.

~~(ii) Buyer shall pay the Existing DIP as follows:~~

~~(A) The Existing DIP Payment Amounts shall be paid within 5 Business Days following entry of the Sale Order (the "Replacement DIP Date"); provided, however that such payment of such Existing DIP Payment Amounts shall be conditioned upon the assignment, by the DIP Lenders, of all of their interests in the DIP Facility, and the collateral, to the Buyer and the release of all interests by the DIP Lenders in the DIP Facility (other than any interest attributable to the Disputed DIP Amounts); and~~

(ii) Buyer shall satisfy the Existing DIP Payment Amounts on the Closing Date from the Sale Facility; provided, however that the Existing DIP Payment Amounts may be satisfied by Buyer's assumption and continued funding of the DIP Facility as part of the Sale Facility, continuing in effect all of Buyer's right, title and interests in the DIP Facility, and the Collateral for the DIP Facility.

~~(B) The Disputed DIP Amounts shall be paid on the Disputed DIP Payment Date; provided, however that the payment of any Disputed DIP Amounts are conditional upon the release, and assignment to Buyer, of any remaining interest in the DIP Facility by the DIP Lenders.~~

(b) ~~Subject to any right of the Buyer to overbid at the Auction in accordance with the Bidding Procedures Order, the~~ The purchase price for the Purchased Assets (the

“Purchase Price”) shall be an amount not to exceed ~~\$25 million~~ 28,643,000 (~~(excepting overbids)~~ plus assumption of Assumed Liabilities), as follows:

(i) An amount equal to the ~~Replacement DIP (by Credit Bid or the~~ Sale Facility, which will fund

(A) The ~~Existing DIP Facility Payment Amounts~~ in the estimated amount of ~~\$3,010,000 Tranche A plus \$6,533,871~~ Tranche B as of November 10, 2010 10,583,000

(B) An amount not to exceed ~~\$15.5 million~~ 9,060,000 consisting of the sum of the following (w) Cure Amounts (estimated at ~~\$9,809,000 for Mission Critical Vendors plus \$284,000~~ 6,731,000 for Mission Critical Vendors plus \$123,000 for other executory contract holders), plus (x) Priority Claims (estimated at ~~\$2,147,000~~ 706,000), plus (y) ~~Administrative Expenses including a Capstone Investments fee (estimated at \$860,000), plus (z) Wind Down Budget amounts (including Pre-Closing Costs, if any, and estimated at \$807,000), plus \$1,500,000 on account of~~ for the Balance Sheet Amount Fee Payment Cap;

(C) Credit bid of \$9,000,000 of the Pre-Petition Facility, which Buyer may assume and satisfy post-Closing, in its sole discretion;

(ii) plus assumption of the Assumed Liabilities;

~~(iii) plus the amount of the overbid, if any.~~

(c) Not later than one (1) Business Day prior to the Closing Date, the Sellers and Buyer shall cooperatively prepare a closing statement consisting of (i) the amount necessary to pay off ~~the Replacement DIP Facility or any replacement thereof~~ amounts drawn on the DIP Payment Amounts; (ii) amounts attributable to the Cure Amount to be paid on the Effective Date pursuant to the Confirmation Order from an additional draw on the Sale Facility (which statement shall set forth in reasonable detail the basis for the calculation of the Cure Amount); (iii) amounts necessary to fund ~~any remaining Administrative Expense Claims not paid by the Replacement DIP~~ the Fee Payment Cap components not previously paid by the DIP Facility or Sale Facility (for the avoidance of doubt, advances by Purchaser in its discretion from the Sale Facility to satisfy amounts within the Fee Payment Cap reduce, dollar for dollar, the Sale Facility and the total amount that will be funded on the Closing for the Fee Payment Cap), amounts attributable to Priority Claims, amounts ~~attributable to Professional Fees (to the extent not previously paid by the Replacement DIP)~~ and amounts attributable to due under the Wind Down Budget (to the extent not previously paid by the ~~Replacement DIP Facility~~), ~~and (iv) the Balance Sheet Amount~~ all to be satisfied from an additional draw on the Sale Facility. Under no circumstances shall the foregoing exceed, on an aggregate basis, the remaining Purchase Price; provided however, that ~~any excess~~ all Administrative Expense Claims (as defined in the Plan)

and all other claims and liabilities of Seller not expressly assumed by Buyer shall have been paid, satisfied or discharged by the Plan and the Confirmation Order, with Administrative Expense Claims along with the Cure Amount first satisfied by using any funds deemed not to collateralize the Pre-Petition Facility.

(d) At the Closing, the Purchase Price shall be payable,

(i) with respect to the ~~Replacement~~ DIP Facility, in the form of a credit in an amount equal to Sellers' obligations under the ~~Replacement~~ DIP Facility, in accordance with § 363(k) of the Bankruptcy Code (the "Credit Bid"), or by assumption of the DIP Payment Amounts by Buyer;

(ii) with respect to amounts attributable to the Cure Amount, the ~~Administrative Expense Claims (if any), Fee Payment Cap, and the Priority Claims, the Wind Down Budget, the Professional Fees and the Balance Sheet Amount~~ in cash ~~(to the extent not previously paid by the Replacement DIP)~~ by advances from the ~~Replacement Sale Facility~~ (to the extent not previously paid by the Debtors using DIP Facility financing and operating income under the DIP Budget, and the Purchase Price is reduced to the extent of such a payment and, to the extent any such payment is a Fee Payment Cap item, such payment also reduces the amount available under the Fee Payment Cap); and

(iii) with respect to the amount of the Assumed Liabilities described in Section 2.3, by assuming such Assumed Liabilities through a duly executed assignment and assumption agreement reasonably agreed to by Buyer and Sellers (the "Assignment and Assumption Agreement") or such other instrument(s) of conveyance and transfer, in form and substance reasonably acceptable to Sellers, as may be necessary to convey the Purchased Assets to Buyer (which, in the event of an Alternative Transaction, shall acknowledge that the Assumed Liabilities of any entity whose Shares are being acquired remain liabilities of such entity and are not being directly assumed by Buyer).

~~(e) — Amounts necessary to fund the Replacement DIP shall be deposited by Buyer in a segregated, interest-bearing account on the Replacement DIP Date, provided, however, that Buyer as Replacement DIP Lender shall have a perfected security interest in such segregated account, and shall be entitled to receive and keep all interest earned on the deposited funds.~~

(e) Amounts necessary to fund estimated draws under the Sale Facility shall be funded by Buyer on the Closing Date.

ARTICLE IV **CLOSING**

4.1 **Closing Date.** Subject to the satisfaction of the conditions set forth in Article XI hereof (or the waiver thereof by the party entitled to waive that condition) and subject to Buyer's right to terminate this Agreement pursuant to Section 7.5; the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities, including through the Alternative Transaction provided for in Article II hereof, if applicable (collectively, the

“Closing”) shall take place at 10:00 a.m. (Phoenix time) on the Business Day selected by Buyer occurring as soon as practicable after satisfaction or waiver of the ~~Plan Effective Date~~ conditions set forth in Article XI; provided that (i) the Closing will not be delayed until the Regulatory Approval Date if all Regulatory Approvals have been obtained and all other conditions to Closing have been satisfied prior to that date, but shall occur as soon as all conditions to Closing are met, and (ii) the Closing Date shall be no later than the Regulatory Approval Date. Buyer may decide, in its sole and absolute discretion, to proceed with the Closing prior to ~~the a~~ Plan Effective Date.

The Closing shall take place at the offices of Lewis and Roca, LLP (or at such other place as the parties may designate in writing). The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date.”

4.2 **Closing Deliveries.**

(a) Sellers’ Deliveries. At the Closing, the Sellers shall deliver to Buyer:

(i) If an Alternative Transaction is implemented, execution of any and all documents necessary to effectuate the acquisition of Shares and/or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term “Purchased Assets” to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, including without limitation an assignment of certificate of stock or other equity interest, articles of redomestication or conversion or merger or share exchange or any other documents required to be filed by any state having jurisdiction over the entities who are parties to an Alternative Transaction or formed or to be formed in connection with an Alternative Transaction;

(ii) ~~(i)~~ bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of all of Sellers’ right, title and interest in the Purchased Assets to Buyer, duly executed by the Sellers;

(ii) all original books and records, including, without limitation, originals of any title documents related to the Purchased Assets and originals of any of the Purchased Assets, including contracts,

real property leases, Intellectual Property and Permits and any and all passwords, user names, log ins and similar codes related to any of the Purchased Assets;

- (iii) a duly executed Assignment and Assumption Agreement;
- (iv) an assignment and assumption of ~~lease for~~ each Real Property Lease (collectively, the "Lease Assignments"), duly executed by the applicable Seller that holds the leasehold interest in such Real Property Lease;
- (v) duly executed assignments of (i) the patents and trademarks that are included in Intellectual Property (if applicable), in forms suitable for recording in the United States Patent and Trademark Office, and (ii) duly executed assignments of the copyright registrations and applications for copyright registration owned by the Seller that are included in Intellectual Property (if applicable);
- (vi) duly executed assignments, in form and substance acceptable to Buyer, of any Contract relating to licensed Intellectual Property;
- (vii) the ~~officer's~~ Executive Officer's certificate required to be delivered pursuant to and certifying to the matters set forth in Section 11.1(a) and Section 11.1(b), in form and substance satisfactory to Buyer;
- (viii) an executed management agreement, if applicable;
- (ix) a copy of all orders entered by the Bankruptcy Court pertaining to the transactions contemplated herein, including the Sale Order and, if applicable, the Confirmation Order;
- (x) all consents obtained, and all notices to third parties given, by the Sellers as of the Closing Date regarding the transfer of the Purchased Assets;
- (xi) final copies of the Schedules hereto;
- (xii) certified resolutions from the board of directors of each of the Sellers approving and authorizing this Agreement and the transactions contemplated herein;
- (xiii) an affidavit of non-foreign status meeting the requirements of Section 1445(b)(2) of the Code; and
- (xiv) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer.

(b) Buyer's Deliveries. At the Closing, Buyer shall:

~~(i) pay in cash the amount required to pay the Closing Cash Payment from Replacement DIP funds;~~

(i) advance additional amounts as necessary from the Sale Facility to meet Closing obligations including Closing Cash Payments;

(ii) if an Alternative Transaction is implemented, execution of any and all documents necessary to effectuate the acquisition of Shares and/or other equity interests of the Company or one or more of its subsidiaries (which, in such event, would render the defined term "Purchased Assets" to include such equity interests) by direct purchase of such equity interests, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state, including without limitation a subscription for purchase of stock or other equity interest, an acceptance of assignment of certificate of stock or other equity interest

(iii) ~~(iii)~~ execute and deliver to Sellers the Assignment and Assumption Agreement;

(iv) ~~(iii)~~ execute and deliver to Sellers the Lease Assignments; and

(v) ~~(iv)~~ deliver an officer's certificate, duly executed by a senior officer of the Buyer, certifying to the matters set forth in Section 11.2(a) and Section 11.2(b), in form and substance satisfactory to the Seller.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers (for purposes of this Agreement, including Articles V, ~~VII~~ and VII herein, the term "Sellers" expressly includes each Seller and each such Seller's direct and indirect subsidiaries) represent and warrant to Buyer and agree as follows:

5.1 **Organization of Sellers**. Except as set forth on Schedule 5.1, each Seller is a corporation or limited liability company duly organized, validly existing and in good standing under the Laws of its respective state of formation as identified on Schedule 5.1, and subject to the authority of the Bankruptcy Court each Seller has all requisite power and authority to own,

lease and operate its properties and to carry on its business as now conducted, except for any failure to be in good standing or to have requisite power and authority that in the aggregate could not reasonably be expected to result in a Material Adverse Change. Schedule 5.1 identifies the only jurisdictions in which the ownership, use or leasing of each Sellers assets and properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for those jurisdictions in which the adverse effects of all such failures by such Seller to be qualified, licensed or admitted and in good standing could not in the aggregate reasonably be expected to result in a Material Adverse Change, and Schedule 11.1(h)(i) sets forth all jurisdictions in which qualification, licensing or other regulatory approvals are to be filed or obtained by Sellers.

5.2 **Authority of Sellers.** Each Seller has, upon entry of the Sale Order and Bankruptcy Court approval, all requisite power and authority to execute and deliver this Agreement and each Seller has, upon entry of the Sale Order and Bankruptcy Court approval, all requisite power and authority to execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by such Seller in connection with the consummation of the transactions contemplated by this Agreement (the “Sellers Documents”), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Sellers Documents and the consummation of the transactions contemplated hereby and thereby will be duly authorized by all requisite action on the part of each Seller prior to the Closing. This Agreement has been, and each of the Sellers Documents will be at or prior to the Closing, duly executed and delivered by each Seller which is a party thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order) this Agreement constitutes, and each of the Sellers Documents when so executed and delivered will constitute, legal, valid and binding obligations of each Seller, enforceable against the Sellers in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 **Conflicts; Consents of Third Parties.**

(a) Except as set forth on Schedule 5.3(a), none of the execution and delivery by the Sellers of this Agreement or the Sellers Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by the Sellers with any of the provisions hereof or thereof will conflict with, or result in any breach, violation of or default (with or without notice or lapse of time, or both) under, result in the creation of any Encumbrance, or give rise to a right of acceleration, termination or cancellation under any provision of: (i) the certificate of incorporation and bylaws or comparable organizational documents of the Sellers; (ii) subject to entry of the Sale Order, any Contract or material Permit to which any Seller is a party or by which any of the properties or assets of Sellers are bound; or (iii) subject to entry of the Sale Order, any applicable Law.

(b) Except as set forth on Schedule 5.3(b) and subject to entry of the Sale Order, no material consent, waiver, approval, Order, Permit or authorization of, or declaration or

filing with, or notification to, any other Person or Governmental Body (other than the Bankruptcy Court) is required on the part of any Seller in connection with the execution and delivery of this Agreement or the Sellers Documents, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or the taking by any Seller of any other action contemplated hereby. No other filings or regulatory approvals are necessary for the Operation of the Business, other than those listed on Schedule 11.1(h)(ii).

5.4 **Title to Assets; Sufficiency of Assets.** The Sellers are the owners of the Purchased Assets existing as of the date hereof, provided, however, that with respect to an Alternative Transaction, Sellers are not owners of the Shares, but are entitled under the Plan and Bankruptcy Court orders to effect a transfer of the Shares to Buyer, by direct purchase of the Shares, or by the cancellation of all existing outstanding equity and issuance of new equity interests, or pursuant to the terms of one or more mergers, consolidations, share exchanges, recapitalizations, reorganizations or other similar transactions, with or without redomestication or conversion of the Company or one or more of its subsidiaries into any form of entity under the laws of any state. The Sellers have good, valid and marketable title to the Purchased Assets, except, in the event of an Alternative Transaction, with respect to the Shares, which the Sellers nonetheless are authorized to transfer. Subject to the entry of the Sale Order, and provided such order has not been stayed, modified, vacated or reversed, upon the Closing, Buyer shall acquire all of each Seller's right, title and interest in the Purchased Assets, free and clear of all Encumbrances, Claims and Interests. The Purchased Assets (including without limitation the computer software ~~and Magenta assets~~), whether transferred directly or transferred indirectly through an Alternative Transaction, are sufficient to conduct the Business substantially as presently conducted.

5.5 **Real Property.**

(a) No Seller owns any real property.

(b) With respect to the Real Property Leases:

(i) The Sellers have made available to Buyer accurate and complete copies of (x) the Real Property Leases under which any Seller holds a leasehold interest in each leased real property, together with any amendments, modifications and assignments of such Real Property Leases, and (y) all overleases in the possession or control of Sellers with respect to the Real Property Leases referred to in clause (x) above; and

(ii) The Sellers own the Real Property Leases and the leasehold interests created thereby, free and clear of all Encumbrances except for Permitted Encumbrances.

(c) The Sellers believe in good faith, after due investigation and inquiry, that the Cure Amount and ~~the schedule~~ Cure Schedule for payment thereof set forth on Schedule 2.3(c) with respect to the Real Property Leases is true and correct in all material respects. No monetary defaults exist under any Real Property Leases other than the monetary defaults required to be cured pursuant to Section 365 of the Bankruptcy Code and listed on Schedule

2.3(c). To the Knowledge of Sellers, no non-monetary defaults exist under any Real Property Leases other than the non-monetary defaults listed on Schedule 5.5(c).

(d) Upon Buyer's acquisition of the Purchased Assets, Buyer will be able to operate the Real Property Leases in substantially the same manner as operated by the Sellers without violating any applicable zoning, use, subdivision or similar law.

(e) To the Knowledge of Sellers, no Seller has received written notice that any of the improvements located on the Real Property Leases are not presently used and operated in compliance with all material covenants, easements and restrictions affecting such Real Property Leases.

(f) Except as indicated on Schedule 5.5(f), the Real Property Leases comprise all of the real property used or occupied in the operation of the Business.

5.6 **Intellectual Property.**

(a) Except as set forth on Schedule 5.6(a), to the best of Sellers' Knowledge: (i) with respect to any Intellectual Property owned by Sellers (as opposed to Intellectual Property of which Sellers are a licensee), Sellers have all right, title and interest to all Intellectual Property, without any conflict with the rights of others, (ii) no Person other than the Sellers has the right to use the Intellectual Property owned by the Sellers, ~~and~~ (iii) the Sellers have the valid right to use, pursuant to a license, sublicense or other agreement, any Intellectual Property used in the Business that is owned by a party other than the Sellers, and (iv) Sellers' use of Intellectual Property owned by others does not conflict with the rights of others.

(b) To the Knowledge of Sellers, set forth on Schedule 2.1(e) are all items of Intellectual Property used or useful in connection with or related to the Business. Except as set forth on Schedule 5.6(b), the Sellers have not granted any sublicense or similar right with respect to the Intellectual Property.

(c) With respect to each item that is required to be identified on Schedule 2.1(e) and except as otherwise set forth on Schedule 5.6(c), (i) at the Closing, to the Knowledge of Sellers, Buyer shall hold sole and exclusive rights to all such Intellectual Property, and no other Person shall have existing or contingent rights to use such Intellectual Property except with respect to software that is licensed from unaffiliated third persons or to the extent of licenses granted by Sellers, (ii) Sellers own or possess sufficient rights in or to such item to assign to Buyer all rights of Sellers in such Intellectual Property, and (iii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the Knowledge of Sellers, is threatened, as of the date hereof, that challenges the legality, validity, enforceability, registrations, use, or ownership of the item.

5.7 **Contracts.**

(a) Schedule 2.1(c)(i) and (ii) sets forth a list, as of the date hereof, of all material Contracts to which each Seller is a party or by which it is bound and that are used in or related to the Business or the Purchased Assets. To the extent written, the Sellers have delivered or made available to Buyer true, correct and complete copies of all of the Contracts listed or

required to be listed on Schedule 2.1(c)(i) and (ii), including all schedules, exhibits, annexes, amendments, and modifications relating thereto.

(b) Except as set forth on Schedule 5.7(b), each material Contract is a valid and binding agreement of such Seller, and is in full force and effect, no Seller or, to the Knowledge of Sellers, any other party thereto is in default or breach, and to the Knowledge of Sellers, no event or condition has occurred which after notice or with the lapse of time or both would constitute a default or breach, in any respect under the terms of any material Contract. No Seller has received any written notice of the intention of any party to terminate any material Contract or that any party considers any Seller to be in material breach or material default thereunder or in potential breach in a material respect or default thereunder.

(c) The Sellers reasonably believe in good faith, after due investigation and inquiry, that the amounts set forth on Schedule 2.3(c) with respect to the Contracts represent an accurate and complete statement of the amounts due and owing and unpaid in respect of monetary defaults under the Contracts (exclusive of any pecuniary loss, including legal fees and interest, that may be asserted to be due and owing on account of such defaults). No monetary defaults exist under any Contracts other than the monetary defaults required to be cured pursuant to Section 365 of the Bankruptcy Code and listed on Schedule 2.3(c). To the Knowledge of Sellers, no non-monetary defaults exist under any Contract other than the non-monetary defaults listed on Schedule 5.7(c).

5.8 **Employee Benefits.**

(a) Set forth on Schedule 5.8(a) is a complete and correct list of all “employee benefit plans” as defined by Section 3(3) of ERISA (whether or not subject thereto) and all employment, consulting, retention, deferred compensation, bonus or other incentive compensation, severance or termination pay, stock purchase, stock option and other equity compensation, and all other employee benefit plans, programs or arrangements of any kind that are or were sponsored, maintained or contributed to, or required to be contributed to, by any Seller or an entity which is (or at any relevant time was) a member of a “controlled group of corporations” with or under “common control” with any Seller as defined in Section 414(b) or (c) of the Code (an “ERISA Affiliate”) and which provides or has provided benefits to any current or former Employee or independent contractor of any Seller (collectively the “Employee Plans”). The Sellers have made available to Buyer copies of the documents comprising each Employee Plan.

(b) Except as otherwise provided in Schedule 5.8(b):

(i) (A) each Employee Plan has been operated and administered in all material respects in accordance with its terms and applicable Law, including but not limited to ERISA and the Code, (B) each Employee Plan that is intended to be “qualified” within the meaning of Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service as to the qualified status of the Employee Plan and, to the Knowledge of Sellers, nothing has occurred that could reasonably be expected to cause the revocation of such letter, (C) none of the Employee Plans is subject to Title IV of ERISA or Section 302 of ERISA or is a “multiemployer

plan” within the meaning of Section 3(37) of ERISA, and (D) neither the Seller nor any ERISA Affiliate has incurred or could reasonably be expected to incur any liability under Title IV or Section 302 of ERISA;

(ii) none of the Employee Plans provides coverage for medical or death benefits beyond termination of service or retirement, other than pursuant to COBRA, or any similar state or local Law;

(iii) neither the execution and delivery of this Agreement or any of the ancillary agreements by any Seller, nor the consummation of the transactions contemplated hereby or thereby (either alone or contingent upon the occurrence of any additional or subsequent events) will result in forgiveness of indebtedness or the acceleration or creation of any rights of any Transferred Employee to compensation or benefits under any Employee Plan (including the acceleration of the accrual or vesting of any benefits under any Employee Plan or the acceleration or creation of any rights under any severance, parachute or change in control agreement or the right to receive any transaction bonus or other similar payment); and

(iv) each Employee Plan which provides for the payment of nonqualified deferred compensation under Section 409A of the Code has been operated at all times in good faith compliance with all applicable requirements of Section 409A of the Code and the regulations promulgated thereunder.

5.9 **Litigation.** Except for the Bankruptcy Cases or as set forth on Schedule 5.9, there are no Legal Proceedings pending, or to the Knowledge of Sellers threatened, against or affecting the Business, any Purchased Assets or any Transferred Employee, other than those Legal Proceedings relating to routine claims and those relating to claims covered by insurance.

5.10 **No Finder.** Except as set forth on Schedule 5.10, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for any Seller in connection with the transactions contemplated by this Agreement and no Person acting on behalf of any Seller is entitled to any fee or commission or like payment from Buyer in respect thereof.

5.11 **Environmental Matters.** To the Knowledge of Sellers: (a) the Purchased Assets are in material compliance with all applicable Laws, regulations, or other legal requirements relating to the protection of the environment or human health and safety as it relates to Hazardous Materials (“Environmental Laws”), (b) no Seller has received written notice of any investigation, suit, claim, action, or proceeding relating to or arising under Environmental Laws with respect to the Purchased Assets or the Business, nor are any of the same being threatened in writing against any Seller or any Real Property Lease, (c) no Seller has received any written notice of, or entered into, any obligation, order, settlement, judgment, injunction, or decree involving outstanding requirements relating to or arising under Environmental Laws and (d) there has been no release of any Hazardous Materials into the environment at, onto, or from any property leased by any Seller that would reasonably be expected to result in material liability, costs or claims relating to any Environmental Law. To the Knowledge of Sellers, Sellers have obtained and maintain all Permits, licenses and other authorizations required under all applicable Environmental Laws to

operate the Business as it is currently being operated at the real property leased by Sellers, and all such Permits, licenses and authorizations are in full force and effect.

5.12 **SEC Filings; Financial Statements**. Except as set forth on [Schedule 5.12](#), the Company has filed or furnished all registration statements, reports, schedules and other documents required to be filed or furnished by it or any of the Sellers with the SEC since December 31, 2007 (collectively, including any amendments thereto, the “[Company SEC Reports](#)”). As of their respective filing dates (or, if amended, as of the date of such amendment), the Company SEC Reports were prepared in accordance with, and complied in all material respects with, the requirements of the Exchange Act and the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder, and none of the Company SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a Company SEC Report filed subsequently (but prior to the date hereof). The Company has made available to Buyer complete and correct copies of all amendments and modifications effected prior to the date of this Agreement that have not yet been filed by the Company with the SEC but which are required to be filed. Each of the financial statements (including the related notes and schedules) of the Company included in, or incorporated by reference into, the Company SEC Reports (the “[Financial Statements](#)”) complies in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP (except, in the case of unaudited financial statements, as permitted by applicable rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and their consolidated results of operations for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes). The Sellers have no current intention to correct or restate, and to the Knowledge of the Sellers, there is not any basis to correct or restate any of the Financial Statements other than as set forth on [Schedule 5.12](#). The Sellers have not had any disagreement with any of their auditors regarding material accounting matters or policies during any of its past three (3) full fiscal years or during the current fiscal year-to-date other than as set forth on [Schedule 5.12](#).

5.13 **Undisclosed Liabilities**. Except (i) as disclosed in the Financial Statements and Bankruptcy Schedules or, (ii) for Liabilities incurred in the Ordinary Course of Business since June 30, 2010 and (iii) as disclosed on [Schedule 5.13](#), to the Knowledge of Sellers, the Business does not have any liability of any nature, whether or not absolute, accrued, contingent or otherwise, that would be required to be disclosed on [or in the Financial Statements pursuant to GAAP](#). [All Liabilities of Magenta as of October 31, 2010 are also disclosed on Schedule 5.13.](#)

5.14 **Compliance with Laws; Permits**. Each Seller (i) has complied with, is in compliance with and has operated the Business in compliance with all applicable Laws in all material respects, and (ii) holds all material Permits, concessions, grants, licenses, easements, variances, exemptions, consents, orders, franchises, authorizations and approvals of all Governmental Bodies necessary for the lawful conduct of the Business, except for any non-compliance or non-possession that individually or in the aggregate could not reasonably be

expected to result in a Material Adverse Change. No Seller has received any written notice or other written communication from any Governmental Body or other Person, other than as set forth on Schedule 5.17 with respect to Taxes, (i) asserting any violation of, or failure to comply with, any requirement of any Permit or (ii) notifying Seller of the non-renewal, revocation or withdrawal of any Permit. Seller is in material compliance with the terms of the Permits.

5.15 **Absence of Certain Changes**. Since the Petition Date:

- (a) there has not been any Material Adverse Change;
- (b) except as set forth on Schedule 5.15(b) or with respect to expenditures approved as part of the DIP Budget or otherwise by the Bankruptcy Court order, no Seller has paid, discharged or satisfied any material claim, liability or obligation (whether absolute, accrued, contingent or otherwise) outside the Ordinary Course of Business;
- (c) there has not been any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the Business or any Purchased Assets which has resulted in a Material Adverse Change;
- (d) except as set forth on Schedule 5.15(d), or with respect to the **Replacement** DIP Facility senior lien, no Seller has permitted or allowed any of the Purchased Assets (real, personal or mixed, tangible or intangible) to be subject to any Encumbrances which shall not be released as of the Closing Date, provided that Buyer may assume \$9,000,000 of Pre-Petition Facilities under Section 3.1(b)(1)(C);
- (e) no Seller has sold, transferred, or otherwise disposed of any material properties or assets (real, personal or mixed, tangible or intangible) outside the Ordinary Course of Business;
- (f) no Seller has waived or otherwise released any material causes of actions, lawsuits, judgments, claims and demands except in the Ordinary Course of Business;
- (g) no Seller has disposed of, abandoned or permitted to lapse any material rights to the use or registration of any Intellectual Property, or entered into any exclusive license with respect to any of the Intellectual Property, or disposed of or disclosed to any Person, other than representatives of Sellers, Buyer and the other participants, and their respective representatives, in the Auction to acquire the Business and the Purchased Assets pursuant to non-disclosure agreements, any trade secret, formula, process, know-how not theretofore a matter of public knowledge;
- (h) except as set forth on Schedule 5.15(h), there has not been any transaction or commitment made, or any contract or agreement entered into, by any Seller material to the Business, other than transactions and commitments in the Ordinary Course of Business consistent with past practices and those contemplated herein and other than approved by the Bankruptcy Court;
- (i) except as set forth on Schedule 5.15(i), there has not been any (A) employment, retention, bonus, deferred compensation, severance, retirement or other similar

agreement entered into with any Employee, consultant or director (or any amendment to any such existing agreement), (B) grant of any severance or termination pay to any Employee, consultant or director or (C) change in compensation or other benefits payable to any Employee, consultant or director pursuant to any severance or retirement plans or policies thereof, in each case other than in the Ordinary Course of Business; ~~or~~and

(j) no Seller has agreed, whether in writing or otherwise, to take any action described in this Section 5.15.

5.16 **Accounts Receivable**. All Accounts Receivable of the Business are reflected properly on the books relating to the Business, are to the Knowledge of Sellers, valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to (a) the reserve for bad debts set forth on the face of the Financial Statements as adjusted for operations and transactions through the Closing Date in accordance with the Ordinary Course of Business and (b) the asserted offsets set forth on Schedule 5.16.

5.17 **Tax Matters**. Except as set forth on Schedule 5.17:

(a) The Sellers have timely filed with the appropriate Tax Authorities all Tax Returns required to be filed with respect to the Purchased Assets and the income and operations of the Business. All such Tax Returns are true, complete, and correct in all material respects.

(b) The Sellers have duly paid in full all Taxes and as of the Closing Date, there will be no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the Purchased Assets.

(c) There is no audit or other matter in controversy with respect to any Taxes due and owing by any of the Sellers insofar as any such matter pertains to the Purchased Assets or the income and operations of the Business, and there is no Tax deficiency or claim assessed or, to the Knowledge of Sellers, proposed or threatened (whether orally or in writing) against any of the Sellers, insofar as any such deficiency or claim pertains to the Purchased Assets or the income and operations of the Business.

(d) The Sellers have withheld all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, stockholder, or other third party, and such withheld Taxes have either been duly paid to the proper Taxing Authority or set aside in accounts for such purpose.

(e) The Sellers have not waived any statutory period of limitations for the assessment of any Taxes relating to the Purchased Assets or the income and operations of the Business, or agreed to any extension of time with respect to an assessment or deficiency for such Taxes, other than in the case of any such waivers or extensions in respect of an assessment or deficiency of Tax the liability of which has been satisfied or settled.

(f) The Sellers are not foreign persons within the meaning of Section 1445 of the Code.

(g) Sellers shall separately provide to Buyer a list of all Priority Tax and Priority Non-Tax Claims unpaid as of the execution date of this Agreement.

5.18 **Labor Matters.**

(a) None of the Sellers is a party or subject to any labor agreement with respect to its Employees with any labor organization, union, group or association and the Sellers do not have any employee unions (nor any other similar labor or employee organizations) under local statutes, custom or practice. In the past two years, none of the Sellers has experienced any attempt by organized labor or its representatives to make any Seller conform to demands of organized labor relating to any Employees or to enter into a binding agreement with organized labor that would cover any Employee. There is no labor strike or labor disturbance pending or, to the Knowledge of Sellers, threatened against any Seller nor is any material grievance currently being asserted, and in the past two years no Seller has experienced a work stoppage or other labor difficulty, and is not and has not engaged in any unfair labor practice or been subject to any unfair labor practice complaint or related or successor employer application and no such complaints or applications are, to the Knowledge of Sellers, threatened.

(b) Except as set forth in Schedule 5.18, during the last year there has been no “mass layoff” or “plant closing” as defined by WARN in respect of any Seller, and none of the Sellers has been affected by any transactions or engaged in layoffs or employment terminations sufficient in number to trigger application of any state, local or foreign Law or regulation which is similar to WARN.

5.19 **Employment Matters.**

(a) ~~Schedule 5.19(a) contains~~ Sellers shall separately provide to Buyer a list of all individuals, whether or not actively at work as of the date hereof, who are employed by any of the Sellers in connection with the Business and: (i) their department; (ii) their dates of hire; (iii) their annual salary equivalent; ~~the~~ and Sellers represent and warrant that there are no non-standard bonus, commission or incentive plans or agreements for or with them; or outstanding loans or advances made by or to them; or verbal or written employment agreements which impacts or establishes the terms of employment of those persons. ~~Schedule 5.19(a), and that such list~~ is accurate and complete as of the date indicated thereon (which date is the most recent date for which the information contained thereon is readily available to the Sellers as of the execution date of this Agreement). Correct and complete copies of all employment agreements have been delivered to Buyer.

(b) Schedule 5.19(b) contains a list of all independent contractors currently engaged by any Seller and: (i) their address; (ii) their payment arrangements; and (iii) a brief description of their jobs or projects currently in progress. Schedule 5.19(b) is accurate and complete as of the date indicated thereon (which date is the most recent date for which the information contained thereon is readily available to the Sellers). Correct and complete copies of all written agreements with such contractors have been delivered to Buyer.

(c) Except for any limitations of general application which may be imposed under applicable employment Laws or otherwise set forth on Schedule 5.19(c), and except for

any employment agreements otherwise disclosed to Buyer, each of the Sellers has the right to terminate the employment of its Employees at will and to terminate the engagement of any of its independent contractors without payment to such Employee or independent contractor other than for services rendered through termination and without incurring any penalty or liability.

(d) To the Knowledge of Sellers, the Sellers are in compliance, in all material respects, with all Laws relating to employment practices. The Sellers have delivered to Buyer accurate and complete copies of all current employee manuals and handbooks, disclosure materials, policy statements and other materials prepared, disclosed or promulgated by any Seller at any time during the last three years relating to the employment of the current and former Employees of any Seller.

5.20 **Customers and Suppliers.** Schedule 5.20 sets forth a complete and correct list of the twenty largest customers and the twenty largest suppliers (each measured by dollar volume of sales and purchases as the case may be) of the Business as of and for each of the last two (2) calendar years, and the amount of such business done (by dollar volume of sales and purchases as the case may be) with each such customer or supplier as of and for each such year. No Seller has received any notice from any such customer or supplier that such customer or supplier has ceased, or will cease, to purchase or sell, as applicable, products or services to or from any Seller or will or intends to substantially reduce such purchases or sales, as applicable.

5.21 **No ~~Alternative Outstanding~~ Transactions.** Other than this Agreement, the Sellers are not bound by any agreement with respect to a possible ~~Alternative Transaction or other~~ sale, transfer or disposition of any of the Purchased Assets or the Shares.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Sellers and agrees as follows:

6.1 **Organization of Buyer.** Buyer is a newly formed corporation, duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted, except for any failure to be in good standing or to have requisite power and authority that in the aggregate could not reasonably be expected to result in a Material Adverse Change.

6.2 **Authority of Buyer.** Buyer has full power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated by this Agreement (the "Buyer Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Buyer Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on behalf of Buyer. This Agreement has been, and each Buyer

Document will be at or prior to the Closing, duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Buyer Document when so executed and delivered will constitute, the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including, without limitation, principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 **Conflicts; Consents of Third Parties.**

(a) None of the execution and delivery by the Buyer of this Agreement or the Buyer Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Buyer with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the organizational documents of Buyer, (ii) any contract or permit to which Buyer is a party or by which Buyer or its properties or assets are bound or (iii) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any other Person or Governmental Body is required on the part of Buyer in connection with the execution and delivery of this Agreement or the Buyer Documents, the compliance by Buyer with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby without any material delay, the performance by Buyer of their respective obligations hereunder, or the taking by Buyer of any other action contemplated hereby, or for Buyer to conduct the Business.

~~(c) Buyer either (i) has all necessary authorizations from Government Bodies to provide international, domestic interstate, and intrastate telecommunications services in each jurisdiction in which any Seller currently offers such services, or (ii) knows of no reason why it cannot obtain all such authorizations from Government Bodies in the Ordinary Course of Business and is not subject to any order from any Government Body disqualifying it from holding such authorization.~~

6.4 **No Finder.** Other than as listed on Schedule 5.10, no other Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from Buyer in respect thereof.

6.5 **No Representation.** Notwithstanding anything to the contrary herein, Buyer makes no representation or warranty as to the fair market value of the Purchased Assets being acquired hereunder.

6.6 **Solvency.** Buyer is solvent and will not be left insolvent or with an unreasonably small capital as a result of this transaction.

6.7 **Buyer's Investigation.** As of the Closing Date, Buyer will have conducted its due diligence investigation of Sellers, provided, however, that such investigation does not limit in any way the representations and warranties of the Sellers under this Agreement.

6.8 **Sufficiency of Funds.** Buyer has unencumbered cash on hand or credit or capital contribution arrangements with financially responsible third parties, or a combination thereof, in an aggregate amount sufficient to enable it to pay the Purchase Price and ~~—~~ all other amounts payable by it in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 **Bankruptcy Court Approvals.** Sellers have filed and served the Sale Motion pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, as applicable, and shall use all reasonable efforts and act in good faith to seek entry of an order in form and substance satisfactory to Buyer (the "Sale Order"), which among other things, authorizes the Sellers pursuant to (without limitation) Sections 363(b), 363(f), 363(k), 363(1) and 365(b) of the Bankruptcy Code to enter into and perform this Agreement and contains findings of fact and conclusions of law including (without limitation) those to the following effect: (i) that the Bankruptcy Court has core jurisdiction to enter the Sale Order; (ii) that due and proper notice of the motion for entry of the Sale Order was given to all parties entitled thereto; (iii) that the transactions contemplated by this Agreement are supported by the Sellers' sound business judgment; (iv) that the transactions contemplated by this Agreement are in the best interests of the Sellers and their bankruptcy estates; (v) that the consideration to be received by Sellers under this Agreement is fair and reasonable; (vi) that predicates exist under one or more applicable subsections of Section 363(f) of the Bankruptcy Code to authorize a sale to Buyer of the Purchased Assets free and clear of interests of all parties in the Purchased Assets; (vii) that the Contracts and the Real Property Leases are executory contracts and unexpired leases; (viii) that the Purchased Assets are sold free and clear of all Encumbrances; (ix) that no third party consents are needed for closing other than consents from Governmental Bodies; (x) that Sellers are relieved of any future performance obligation under assigned Contracts and Real Property Leases pursuant to Section 365(k) of the Bankruptcy Code; (xi) that the Buyer is a good-faith purchaser entitled to the protections of Section 363(m); (xii) authorizing the assumption and assignment of the Contracts and Real Property Leases; (xiii) liquidating each default to be cured as a prerequisite to assumption or setting such default for hearing; (xiv) (A) directing that each liquidated default be cured within ten days after Closing by payment or provision for payment of a liquidated sum, tender of which shall constitute a complete satisfaction of all claims arising from defaults (both monetary and non-monetary), or (B) provision for segregating such sum to cure those defaults, following their liquidation as the Court may deem necessary to constitute adequate assurance of prompt cure of defaults, or (C) authorizing the curing of those defaults in such time and in such manner as may be agreed by the Buyer and the counterparty to such contract or lease; (xv) authorizing the parties to close; (xvi) over-ruling all objections to entry of the Sale Order; (xvii) reserving jurisdiction to construe and enforce the Sale Order; (xviii) providing that Buyer is not a successor in interest to Sellers or the business of Sellers with respect to all parties having notice of the sale; (xix) providing that Buyer shall not be liable for any pre- or post-petition debts of the

Sellers other than with respect to payment of the Purchase Price as allocated among the Assumed Liabilities—, Administrative Expense Claims including Fee Claims, Priority Claims and Wind Down Obligations as set forth in this Agreement; (xx) containing such other findings and provisions as may be reasonably requested by Buyer; (xxi) that ~~the assignment from the DIP Lenders to Buyer of their interests in the DIP Facility and the collateral pledged thereunder will give Buyer all rights of the DIP Lenders as described in the DIP Order (and will recognize the assignment of the DIP Facility from the DIP Lenders to Buyer)~~; (xxii) that any and all additional amounts advanced under the Replacement DIP Facility and Sale Facility shall be approved by the Court; ~~(xxiii)~~(xxii) that all obligations of the Sellers under and with respect to the Replacement DIP Facility and Sale Facility will be secured by, pursuant to sections 364(c)(2) and section 364(d)(1) of the Bankruptcy Code, a first priority lien senior to all prepetition and post petition liens and security interests of all prepetition and post petition lenders, and will also receive and be entitled, pursuant to Section 364(c)(1) of the Bankruptcy Code, to a super-priority administrative expense claim over all other costs and expenses of the kinds specified in, or ordered pursuant to, sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726 or any other provisions of the Bankruptcy Code; ~~(xxiv)~~(xxiii) that all advances made pursuant to the Replacement DIP Facility and Sale Facility shall be deemed to be included in the Pivotal GC Indemnification and Reimbursement Claim (as defined in the DIP Order); ~~(xxv)~~(xxiv) that all obligations of the Sellers ~~to the DIP Lenders, and any obligations~~ to any prepetition secured or unsecured lenders have been released or shall be released through the Confirmation Order as of the date thereof; ~~(xxvi)~~(xxv) that the transfer of any assets from Magenta in consideration for release and extinguishment of intercompany notes is for fair value, if applicable; ~~(xxvii)~~(xxvi) that Magenta has not received any prepetition or post-petition advances from any prepetition or post petition lender; ~~(xxviii)~~(xxvii) to the extent possible after exerting the best efforts of each of the parties, that the provisions of Bankruptcy Rules 6004(g) and 6006(d) shall not apply to the Sale Order; ~~(xxix)~~(xxviii) that the Buyer has not acted in a collusive manner with any Person and the Purchase Price was not controlled by any agreement among bidders; ~~and (xxx)~~(xxx) that nothing contained in the Plan or any plan of reorganization or liquidation will alter, conflict with, or derogate from, the provisions of this Agreement, provided however, that if the Buyer elects to consummate this transaction under the Plan, the terms of the Plan shall be conformed to the extent that any provision of this Agreement is inconsistent therewith; and (xxx) in the event of an Alternative Transaction, (i) the transfer of the Shares to the Buyer pursuant to, and subject to the terms of, the Alternative Transaction shall constitute a legal, valid and effective transfer of the Shares, and shall, upon the consummation of the Closing, vest in the Buyer good and marketable title in and to the Shares, free and clear of all Interests, Claims, liens and Encumbrances of any kind or nature whatsoever, (ii) all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and other regulatory authorities, lenders, trade and other creditors holding any claims to the Shares, are forever barred and estopped from asserting against the Buyer, its successors or assigns (to the extent allowed by law), its property, its officers, directors and shareholders or the Shares, such persons' or entities' Claims and Interests, and (iii) all such Claims and Interests shall be unconditionally released and terminated as to the Shares.

7.2 **Cooperation.** Sellers and Buyer shall consult with one another regarding pleadings which either of them intends to file, or positions either of them intends to take before the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Sale Order, the Confirmation Order, the Replacement DIP Sale Facility or this Agreement. Sellers shall promptly and reasonably provide Buyer and its counsel with all

notices and communications received by Sellers relative to any of the transactions contemplated by this Agreement, provided that Sellers shall be entitled to maintain in confidence all communications to and from prospective buyers other than Buyer, except as required to make such communications public by the Bankruptcy Court. ~~From the date hereof (and any prior time) and until the date of the Auction, each of the Sellers is permitted to cause its representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Purchased Assets. In addition, the Sellers shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Purchased Assets and perform any and all other acts related thereto that are required under the Bankruptcy Code or other applicable Law, including, without limitation, supplying information relating to the Business, the Purchased Assets, the Contracts and the Real Property Leases to prospective purchasers.~~

7.3 **Seller Actions.** The Sellers shall use their commercially reasonable efforts to have the Bankruptcy Court schedule a hearing on the Sale Motion and Plan Confirmation as soon as possible so as to obtain entry by the Bankruptcy Court of the Sale Order and Confirmation Order by no later than ~~November 4~~ February 1, 2010-2011 (the “Sale Hearing”). The Sellers shall also use their commercially reasonable efforts to obtain any other approvals or consents from the Bankruptcy Court that may be reasonably necessary to consummate the transactions contemplated in this Agreement. Furthermore, the Sellers shall serve on all counterparties to the Contracts and Real Property Leases that are to be transferred pursuant to Section 2.1(b) and 2.1(c)(i) to the extent not previously notified, a notice specifically stating that the Sellers are or may be seeking the assumption and assignment of such Contracts and Real Property Leases (“Assignment Notice”) and shall notify such parties of the deadline for objecting to the assumption and assignment and Cure ~~Amounts~~ Amount, which deadline shall not be less than two (2) days prior to the Sale Hearing unless otherwise provided in the Bidding Procedures Order. In cases in which the Sellers are unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00. The Sale Motion and Assignment Notice shall reflect Buyer’s agreement to perform from and after the Closing under the Contracts and Real Property Leases, which, subject to Bankruptcy Court approval shall be the only adequate assurance of future performance necessary to satisfy the requirements of section 365 of the Bankruptcy Code in respect of the assignment to Buyer of such Contracts and Real Property Leases.

7.4 **Further Actions.** Buyer agrees that it will promptly take such actions as are reasonably requested by the Sellers to assist in obtaining the Sale Order and implementing the Bidding Procedures Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code and can provide assurance of future performance under the Contracts and Real Property Leases. Buyer and Sellers agree to cooperate to make all necessary regulatory filings by the Regulatory Filing Date and take any other necessary or desirable actions to facilitate the performance of their obligations hereunder.

7.5 **Plan of Reorganization.** The parties acknowledge that the sale contemplated by this Agreement is a component of Sellers’ Plan of Reorganization (the “Plan”) filed with the Bankruptcy Court herewith. ~~At the option of Buyer, the~~ The Plan shall be modified ~~within 15~~

~~days of the entry of the Sale Order to provide for modifications conforming to~~ conform the Plan to the terms and conditions of this Agreement. The parties further agree that ~~if the Plan is not confirmed by the Bankruptcy Court by December 31, 2010, the Sellers become administratively insolvent, or an Event of Default (as defined in the DIP Facility or the Replacement DIP) occurs, then, if the Buyer so elects, and upon not less than three (3) Business Days' notice thereof to the Sellers, the Purchased Assets shall be sold to Buyer pursuant to a sale order outside of the Plan for the consideration set forth in the winning bid on substantially the same~~ confirmation of the Plan and the Effective Date of the Plan are not preconditions to the approval or Closing of the Sale to Buyer under the terms and conditions set forth herein.

ARTICLE VIII **COVENANTS**

The respective parties hereto covenant and agree to take the following actions between the date hereof and the Closing Date.

8.1 **Access to the Business.** Sellers shall afford to the officers, employees and authorized representatives of Buyer (including, without limitation, independent public accountants and attorneys) reasonable access during normal business hours to the offices, properties, Employees and business and financial records of the Sellers to the extent Buyer shall reasonably deem necessary or desirable and shall furnish to Buyer or its authorized representatives such additional information concerning the Purchased Assets, the Business and the operations of Sellers as shall be reasonably requested, including all such information as shall be necessary to enable Buyer or its representatives to verify the accuracy of the representations and warranties contained in this Agreement, to verify that the covenants of Sellers contained in this Agreement have been complied with, and to determine whether the conditions set forth in Article XI have been satisfied. Buyer agrees that such investigation shall be conducted in such a manner as not to interfere unreasonably with the operations of Sellers. No investigation made by Buyer or its representatives hereunder shall affect the representations and warranties of Sellers hereunder. Buyer expressly acknowledges that any information it receives pursuant to this Section 8.1 is subject to the confidentiality provisions set forth in Section 13.2.

8.2 **Preserve Accuracy of Representations and Warranties.** Each of the parties hereto shall refrain from taking any action that would render any representation or warranty contained in Article V or VI of this Agreement inaccurate as of the Closing Date.

8.3 **Operations Prior to the Closing Date.** Between the Sale Hearing and the Closing, Sellers will cause the Business to be operated in the Ordinary Course of Business ~~(and upon the funding of the Replacement DIP, operated pursuant to the terms of the Replacement DIP Budget)~~ Facility Budget, and shall not take any action inconsistent with the transactions contemplated hereby and will not permit any material transaction outside the Ordinary Course of Business in respect of the Business without the express written approval of Buyer (which shall not be unreasonably withheld) or unless so ordered by the Bankruptcy Court after notice to Buyer. Sellers shall take no action to the detriment of Buyer or the operation of the Business by Buyer, following the Sale Hearing. Sellers acknowledge and agree that prior to the Closing Date Sellers are operating the Business on behalf of, and in trust for, the Buyer, and shall take no action in

contravention thereof. Without limiting the generality of the foregoing, Sellers shall not, without the express written approval of Buyer, which shall not be unreasonably withheld, or authorization by order of the Bankruptcy Court:

(a) except as set forth on Schedule 5.6(c), fail to maintain or renew all copyright, trademark and patent applications or fail to maintain any registered copyrights, trademarks or patents;

(b) fail to maintain in good working order any Equipment, unless it has a de minimis impact upon the Business;

(c) fail to maintain all insurance covering loss or destruction of the Purchased Assets or conduct of the Business currently in effect;

(d) fail to maintain all material relationships with lessors, licensors, suppliers, customers, and employees of the Business;

(e) fail to preserve the strict confidence of all trade secrets related to the Business, subject to the Sellers' ability to disclose information to other prospective bidders and their advisers in accordance with the terms of the standard non-disclosure agreement furnished to prospective bidders;

(f) enter into any contract, agreement, undertaking or commitment affecting the Business outside of the Ordinary Course of Business or enter into any agreement, undertaking or commitment that will have the effect of competing with Buyer's operation of the Business;

(g) sell, lease (as lessor), transfer or otherwise dispose of (including any transfers from a Seller to any of its Affiliates), or mortgage or pledge, or impose or suffer to be imposed any Encumbrance on, any of the Purchased Assets or Shares, other than consenting to the assignment of the DIP Facility from the DIP Lenders to Buyer pursuant to the terms hereof;

(h) unless to Sellers' benefit or in the Ordinary Course of Business, amend, modify, extend, renew or terminate any Contract or Real Property Lease that is to be assumed by Buyer, or terminate, waive or amend any right under any of the Contracts or Real Property Leases that are to be assumed by Buyer;

(i) enter into any business or arrangement or otherwise take any action that would reasonably be expected to have a material adverse impact on the ability of the Buyer to obtain any material consents of Governmental Bodies necessary in connection with the Business;

(j) intentionally fail to notify Buyer in writing of the commencement of any material litigation against any Seller or the Business;

(k) hire any new individuals or increase salaries or wages, declare bonuses, increase compensation or benefits or institute any new employment arrangement, benefit plan or program with respect to any Employee, except as required by law, as required by the terms of previously existing Employee Plans or in the Ordinary Course of Business;

(l) intentionally fail to notify Buyer in writing of the proposed entry into any Contract or Real Estate Lease and the intention to reject any Contract or Real Estate Lease; or

(m) enter into any commitment for capital expenditures except pursuant to the ~~Replacement~~DIP Facility Budget; or

(n) fail to comply with all requirements of Law applicable to the Purchased Assets, and promptly after receipt thereof, give Sellers copies of any notice received from any Governmental Body or other Person alleging any violation of or liability under any such Requirements of Law.

To the extent that there is any ambiguity as to whether a contract, agreement, undertaking or commitment affects the Business or the Purchased Assets or is outside of the Ordinary Course of Business, Sellers shall consult with Buyer in good faith prior to entering into such contract, agreement, undertaking or commitment. For purposes of clarity, nothing in this Section 8.3 shall be construed to in any way limit Sellers' ability to auction the Purchased Assets to the highest bidder at the Auction.

8.4 **Notification by Sellers of Certain Matters.** During the period prior to the Closing Date, Sellers will promptly advise Buyer in writing of (a) any notice, objection or other communication from any third Person alleging that the consent of such third Person is or may be required in connection with the transactions contemplated by this Agreement, (b) any material default under any Contract or Real Property Lease or event which, with notice or lapse of time or both, would become such a default on or prior to the Closing Date and of which Sellers have Knowledge, and (c) any Material Adverse Change.

8.5 **Regulatory Approvals.** Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to apply to all applicable Governmental Bodies for any approval required for the consummation of the transactions contemplated by this Agreement, shall prosecute such applications in good faith and with due diligence before the Governmental Bodies, and in connection therewith shall take such action or actions as may be necessary or reasonably required in connection with the applications, including furnishing to the Governmental Bodies any documents, materials, or other information requested by them in order to obtain the required approvals as expeditiously as practicable. In addition, to the extent practicable, the parties hereto shall use their best efforts to (a) promptly notify each other of any communication to that party from any Governmental Body with respect to the applications described in this paragraph, (b) permit a representative of the other party reasonably acceptable to the first party to attend and participate in meetings (telephonic or otherwise) with any Governmental Body, and (c) permit the other party to review in advance, as reasonable, any proposed written communication to a Governmental Body. No party hereto shall knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause any Governmental Body not to grant approval of any application or materially to delay such approval, to the material detriment of the other party. However, Buyer shall be solely responsible for obtaining authorization to offer telecommunications services in any jurisdiction in which it does not currently hold such authorization. Sellers shall provide Buyer with such assistance in obtaining such authorizations as Buyer shall reasonably request, and ~~Replacement~~DIP Facility funds shall be made available

for all Regulatory Approval actions of Buyer and Sellers. Buyer shall also file all reports, and cause to be delivered all notices to Sellers' telecommunications service customers required by 47 C.F.R. Section 64.1120(e) and comparable State regulations.

8.6 **Publicity.** Neither the Sellers nor Buyer shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Buyer or the Sellers, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Buyer or the Sellers list securities, provided that the party intending to make such release shall use its reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.7 **Sellers' Name Change.** The Sellers shall, following the Closing, upon any request of Buyer, execute and deliver to Buyer appropriate documents to change the names of each Seller (except a Seller whose Shares have been acquired by Buyer) to a name substantially dissimilar to "Global Capacity", "20/20 Technologies", "Capital Growth", "CentrePath", "CenterPath", "Nexvu Technologies" and "FNS 2007." The Sellers shall thereafter file any necessary documents to reflect the foregoing name changes with the appropriate Governmental Body for each jurisdiction in which each Seller is organized and/or qualified to do business. Notwithstanding the foregoing, nothing herein shall be deemed to limit or restrict the ability of Buyer to utilize such names in connection with its operation of the Business or otherwise.

8.8 **Additional Matters.** Subject to the terms and conditions of this Agreement, each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper, or advisable under applicable Laws and regulation to consummate and make effective the transactions contemplated by this Agreement, including using all commercially reasonable efforts to obtain all necessary waivers, consents, and approvals required under this Agreement. Prior to the Closing, Sellers shall take any and all necessary actions to transfer, assign, record or perfect in its name record title to any of its Purchased Assets that is not presently held or recorded in its name, including, without limitation, filing any necessary notices of assignment in the United States Patent and Trademark Office or United States Copyright Office, as applicable, with respect to the Intellectual Property.

8.9 **Post-Closing Operation of Non-Transferred Assets.** Subsequent to Closing, to the extent any Non-Transferred Assets exist, Buyer or Seller, in the sole determination of Buyer, shall operate the Non-Transferred Assets pursuant to a management agreement agreed to between Sellers and Buyer until the Non-Transferred Assets are transferred to Buyer.

ARTICLE IX

AGREEMENTS REGARDING EMPLOYEES

9.1 **Employees.** Buyer shall have the right, but not the obligation, to employ or engage as contractors any or all of the Employees as Buyer determines in its sole and absolute discretion. The terms of employment offered to any Employees shall be determined by Buyer in

its sole and absolute discretion. Any Employees actually employed by Buyer are referred to herein as “Transferred Employees.” Buyer shall deliver a list of the Employees it intends to hire prior to the Sale Order Date. Sellers shall deliver to Buyer on or before the Closing Date all personnel files and employment records relating to the Transferred Employees (including completed I-9 forms and attachments with respect to all Transferred Employees, except for such employees as Seller certifies in writing are exempt from such requirement). Buyer may, at its option in its sole discretion offer a management incentive plan to any of the Transferred Employees on rates commensurate with the industry in consideration for nonsolicitation of the Sellers’ existing customers for a period of one year following the Closing Date in the event they are terminated within such time period. Nothing herein shall limit Sellers’ covenants set forth herein not to compete with Buyer prior to or following the Sale Hearing. In the event of an Alternative Transaction, Buyer may require, as a condition of Closing, that Company terminate or cause to be terminated any Employees designated by Buyer, in its sole and absolute discretion.

9.2 **Employee Plans.** Unless the Buyer, in its sole discretion, elects on or after the Closing, to adopt any of Sellers’ Employee Plans, the Sellers shall retain (or, in the event of an Alternative Transaction, Sellers shall otherwise cause to be terminated, assumed by one or more third parties, or otherwise disposed of) (i) all liabilities and obligations in respect of its past, present and future employees under applicable Laws and (ii) all liabilities and obligations under any “employee benefit plan” within the meaning of Section 3(3) of ERISA and any other employee benefit plan or program maintained or contributed to by Sellers or any ERISA Affiliate, including any Employee Plans, and Buyer shall have no liability or obligation whatsoever under the Employee Plans nor shall Buyer assume the sponsorship of the Employee Plans. Buyer may, at its option, in its sole discretion, offer such benefit plans or employee plans to any Transferred Employees on such terms and conditions as are commensurate with other companies of the size of Sellers in the industry, provided that nothing herein shall require Buyer to offer any employee or other benefit plans to Transferred Employees.

9.3 **Other Obligations.** Except as otherwise required by Law, specified in this Agreement, set forth on Schedule 9.3, or otherwise agreed in writing by Buyer and/or its Affiliates (including by inclusion in the Wind Down Budget), neither Buyer nor its Affiliates shall be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee of the Sellers on account of any termination of such Employee’s employment on or before the Closing Date, and such benefits (if any) shall remain obligations of the Sellers.

9.4 **Forms W-2 and W-4.** The Sellers and Buyer shall adopt the “standard procedure” for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and Forms W-4 (Employee’s Withholding Allowance Certificate) regarding the Transferred Employees. Under this procedure, Sellers shall keep on file all IRS Forms W-4 provided by the Transferred Employees for the period required by applicable law concerning record retention and Buyer shall obtain new IRS Forms W-4 with respect to each Transferred Employee.

9.5 **Employee Communications.** Prior to making any written or oral communications to the Employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, Sellers shall provide Buyer with a copy of the intended communication.

ARTICLE X

TAXES

10.1 **Transfer Taxes.** No Seller owns any real property. Buyer shall have no liability hereunder for any Transfer Taxes. The Sellers shall seek to include in the Sale Order with respect to this Agreement a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes under Section 1146(a) of the Bankruptcy Code. The Sellers and Buyer shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds of Transfer Taxes.

10.2 **Purchase Price Allocation.** The allocation of the Purchase Price (plus any Assumed Liabilities, to the extent permitted by the Code) among the Purchased Assets shall be determined pursuant to Schedule 10.2 prepared by Buyer as soon as practicable on or after the Closing Date (or, in the event of an Alternative Transaction, in accordance with such other method as is customary and in accordance with generally accepted accounting principles in connection with an acquisition of equity interests). Buyer and the Sellers hereby covenant and agree that the values assigned to the Purchased Assets in Schedule 10.2 shall be conclusive and final for all purposes of this Agreement, to the extent permitted by the Code. Buyer and the Sellers further covenant and agree not to take a position on any Tax Return or in any judicial or administrative proceeding that is inconsistent with the allocations specified in Schedule 10.2, provided that nothing contained herein shall prevent the Sellers and Buyer from settling any proposed deficiency or adjustment by any Taxing Authority based upon or arising out of the Purchase Price allocation, and neither the Sellers nor Buyer shall be required to litigate before any court, any proposed deficiency or adjustment by any Taxing Authority challenging such allocation. Buyer and the Sellers each shall file with their respective U.S. federal income Tax Returns (if otherwise required to be filed) for the tax year in which the Closing occurs an IRS Form 8594 (or other applicable form) in accordance with Schedule 10.2. Buyer and the Sellers each shall deliver to the other a copy of the IRS Form 8594 (or other applicable form), as so filed with its respective U.S. federal income Tax Return, if any, within thirty (30) days of the filing of such return.

10.3 **Tax Returns.** Sellers shall prepare or cause to be prepared all Tax Returns relating to the Purchased Assets for the periods ending on or prior to the Closing Date. Buyer shall prepare and file all Tax Returns relating to all real property taxes, personal property taxes, or similar ad valorem obligations levied with respect to the Purchased Assets (excluding any Transfer Taxes) for any taxable period beginning on or before and ending after the Closing Date (a "Straddle Period," and such taxes, "Straddle Period Taxes"), whether imposed or assessed before or after the Closing Date, other than Straddle Period Tax Returns that Sellers are required to file by applicable law. The Liability for payment of each such Straddle Period Tax shall be prorated between Buyer and Sellers at the Closing Date based on 100% of the amount of such Straddle Period Tax imposed for the prior taxable period. The portion of each such Straddle Period Tax that is allocable to the Sellers shall be the product of (i) 100% of the amount of such tax for the prior taxable period and (ii) a fraction, the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire tax period. The amount of tax allocable to the Sellers pursuant to this section in excess of amounts allocated thereto as provided for as Priority Claims or Administrative Expense Claims

shall be withheld from the Purchase Price, and the Buyer shall be responsible for remitting all Straddle Period Taxes to the appropriate Taxing Authority when due.

10.4 **Cooperation**. Sellers and Buyer agree to furnish to each other upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Business (including access to books and records related to the Business) as is reasonably necessary for the filing of all Tax Returns and other tax filings, the making of any election related to taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding related to taxes. Sellers and Buyer shall provide timely notice to each other in writing of any pending or threatened tax audits, assessments or litigation with respect to the Purchased Assets or the Business for any taxable period for which the other party may have Liability under this Agreement.

ARTICLE XI **CONDITIONS PRECEDENT**

11.1 **Conditions Precedent to Obligations of Buyer**. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of the Sellers set forth in Article V shall be true and correct in all material respects as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), and Buyer shall have received a certificate signed by an authorized officer of the Sellers on behalf of all the Sellers, dated the Closing Date, to the foregoing effect;

(b) the Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and Buyer shall have received a certificate signed by an ~~authorized officer~~ Executive Officer of the Sellers on behalf of all Sellers, dated the Closing Date, to the forgoing effect;

(c) all required consents and all other consents, approvals and actions of, filings with and notices to any Governmental Body or any other Person set forth on Schedule 5.3(b) shall have been duly obtained, delivered, made or given and shall be in full force and effect, provided that Buyer may waive this requirement and Close on the Regulatory Approval Date, with certain Purchased Assets as Non-Transferred Assets under Section 2.5, in its sole discretion;

(d) there shall not have occurred an event or failure to act causing a Material Adverse Change;

(e) the Sellers shall have delivered, or caused to be delivered, to Buyer all of the items set forth in Section 4.2(a);

(f) Buyer shall not have otherwise terminated this Agreement in accordance with the terms of Section 12.1;

~~(g) — all conditions set forth in the Plan to have been satisfied prior to the Plan Effective Date shall have been satisfied or waived and the Plan Effective Date shall have occurred or shall occur contemporaneously with the Closing;~~

(g) ~~(h)~~ the Sale Order and Confirmation Order, as applicable, shall have been entered and shall not be subject to a appeal or a stay and the Bankruptcy Court shall have provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Confirmation Order shall be acceptable to Buyer and shall contain terms and as requested by Buyer. The Sale Order and Confirmation Order, as applicable, shall have become final and non-appealable orders, unless this condition has been waived by Buyer in its sole discretion;

(h) ~~(i)~~ Telecommunications Regulatory Matters.

- (i) Buyer will have been duly licensed and/or registered as a provider of regulated telecommunications services and be in good standing to so provide such regulated telecommunications services in each of the jurisdictions set forth in Schedule 11.1(h)(i) hereto, in which jurisdictions the nature of the business to be conducted by Buyer after the Closing Date makes such licensing or registration of Buyer necessary, unless waived by Buyer in its sole discretion.
- (ii) Schedule 11.1(h)(ii) hereto sets forth a list of all filings and regulatory approvals required to be obtained under the Telecommunications Laws to enable Buyer to purchase the Purchased Assets and consummate the transaction contemplated by this Agreement, other than such filings and regulatory approvals that pertain solely to Buyer's authorization to operate the Purchased Assets after the Closing Date (*i.e.*, applications for certificates of public convenience and necessity or similar authorizations), and includes all filings and regulatory approvals required for Sellers to hold full and complete qualification, licensing and other regulatory approvals for all conduct of the Business.
- (iii) All necessary consents, approvals, and authorizations required under the State Telecommunications Laws for the transfer to Buyer of the customer accounts and other assets of Sellers used in providing intrastate telecommunications services will have been obtained, except for approvals relating solely to Non-Transferred Assets approved by Buyer in its sole discretion.
- (iv) There shall be no action, order, claim, suit proceeding, litigation, review, notice or, to the Knowledge of Sellers, investigation or

inquiry, pending before the FCC or any State Regulatory Commission, relating to or affecting Sellers or any of their respective properties or assets or any officer or director or shareholder of Sellers, or the payments of sums owing to such authorities as set forth on Schedule 5.12 hereto; and

(i) ~~(j)~~ Any necessary management agreement shall have been entered into and any necessary Bankruptcy Court approvals obtained to do so;

(i) ~~(k)~~ All necessary documents, assignments and agreements have been executed to document the ~~Replacement~~ DIP Facility and Sale Facility and the Buyer has a fully perfected first priority security interest and priming lien in all prepetition and postpetition assets; and

~~(k)~~ All assets of Magenta have been included as Purchased Assets, if the Buyer has given Sellers notice regarding such assets; further, all liabilities of Magenta have been discharged or released, under the Plan or otherwise.

11.2 **Conditions Precedent to the Obligations of Sellers.** The obligations of the Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Sellers in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Buyer set forth in Article VI shall be true and correct in all material respects on and as of the date hereof and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), except that those representations and warranties that are qualified by materiality, Material Adverse Change or similar phrase shall be true and correct in all respects as of the date hereof and on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) with the same force and effect as though made on and as of the Closing Date (or such earlier date), and Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date, and the Sellers shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(c) all required consents, approvals and actions of, filings with and notices to any Governmental Body or any other Person set forth on Schedule 5.3(b) shall have been duly obtained, made or given and shall be in full force and effect;

(d) Buyer shall have delivered, or caused to be delivered, to the Sellers all of the items set forth in Section 4.2(b);

(e) at or prior to the Closing, Buyer shall have made arrangements, satisfactory to the Buyer in its sole discretion, to promptly pay the Cure Amount set forth on the Cure Schedule, so that the Contracts and Real Property Leases may be assumed by the Sellers and assigned to Buyer in accordance with the provisions of section 365 of the Bankruptcy Code;

(f) at or prior to the Closing, Buyer shall have paid the Closing Cash Payment through an advance on the ~~Replacement DIP~~ Sale Facility;

(g) Buyer shall hold authorization to offer telecommunications services, if required, in each jurisdiction in which Sellers provide such services; or, in those States in which Non-Transferred Assets are located, Buyer shall know of no reason why it cannot obtain all such authorizations from State Regulatory Commissions in the Ordinary Course of Business;

(h) The Sellers shall not have otherwise terminated this Agreement in accordance with the terms of Section 12.1; and

(i) Buyer shall have provided Sellers with the ~~Replacement DIP~~ Sale Facility on substantially the same terms and conditions (including priority of liens) as the DIP Facility.

ARTICLE XII **TERMINATION**

12.1 **Termination.** Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual consent of Buyer and Sellers.

(b) automatically and without any action or notice by either the Sellers to Buyer, or Buyer to the Sellers, immediately upon:

(i) the issuance of a final and nonappealable order, decree, or ruling or any other action by a Governmental Body to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets or any material portion thereof contemplated hereby;

(ii) approval by the Bankruptcy Court of ~~an Alternative Transaction;~~ or a transaction otherwise selling or disposing of the Purchased Assets; or

(iii) acceptance by Sellers of a transaction otherwise selling or disposing of the Purchased Assets or the Shares pursuant to an Alternative Transaction).

(c) by Buyer, in its sole discretion:

~~(iii) — acceptance by Sellers of an Alternative Transaction; or~~

~~(iv) confirmation of the modified Plan by the Bankruptcy Court pursuant to Section 7.5 to the extent such modification provides for the termination of this Agreement.~~

~~(c)~~ by Buyer:

~~(i) if the Auction has not concluded by October 25, 2010, unless agreed to in writing by Buyer;~~

~~(ii) if Buyer is not declared the Successful Bidder upon completion of the Auction;~~

~~(iii) if the Bankruptcy Court has not entered the Sale Order by November 4, 2010;~~

(i) ~~(iv)~~ if the Bankruptcy Court has not entered the Confirmation Sale Order by ~~November 30~~February 1, 2010 ~~(or such later date as Buyer may have designated in writing to the Sellers but not beyond December 31, 2010)~~2011;

(ii) ~~(v)~~ if there has been a violation or breach by the Sellers of any material representation, warranty or covenant contained in this Agreement that has not been waived by Buyer;

(iii) ~~(vi)~~ on or at any time after the Regulatory Approval Date if the Closing shall not have occurred due to failure to obtain the Regulatory Approval of a Governmental Body;

(iv) ~~(vii)~~ if, prior to the Closing Date, Sellers' Bankruptcy Cases shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee or examiner with expanded powers is appointed in the Bankruptcy Cases;

(v) ~~(viii)~~ if there shall be excluded from the Purchased Assets any Contract that is not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than any Seller, to the extent that such consent shall not have been given prior to the Closing and such Contract shall, in the opinion of Buyer in its absolute discretion, prevent it from effectively operating the Business; or

(vi) ~~(ix)~~ Buyer and Sellers fail to agree to a Wind Down Budget or a Replacement DIP Sale Facility Budget by the ~~Replacement DIP Closing Date~~.

(d) by Sellers, prior to the Closing:

- (i) if there has been a violation or breach by Buyer of any material representation or warranty contained in this Agreement or any action has occurred with respect to the condition precedent set forth in Section 11.2 that (x) has rendered the satisfaction of any condition to the obligations of Sellers impossible or is not curable or, if curable, has not been cured within ten (10) days following receipt by Buyer of written notice of such breach from Sellers, and (y) has not been waived by Sellers;
- (ii) at any time after the Regulatory Approval Date if the Closing shall not have occurred due to failure to obtain the approval of a Governmental Body;
- (iii) if Buyer's obligation to close (other than the accuracy of any Seller's representations or warranties) have been met, there is no pending appeal and stay pending appeal of the sale contemplated hereunder, Sellers are ready, willing and able to close the sale contemplated hereunder, no Seller is in default of this Agreement, nor is there an event which, with the giving of notice or passing of time, would be a default to this Agreement, and Buyer fails to consummate the Closing within thirty (30) Business Days following the date of satisfaction of the last such condition to Closing;
- ~~(iv) if a Qualified Bidder other than Buyer has been declared the Successful Bidder upon completion of the Auction; or~~
- (iv) ~~(v)~~ if Buyer and Sellers fail to agree to a Wind Down Budget or a ~~Replacement DIP~~ Sale Facility Budget by the ~~Replacement DIP~~ Closing Date.

12.2 **Effect of Termination.** In the event of termination pursuant to Section 12.1, this Agreement shall become null and void and have no effect and no party shall have any liability to any other (other than pursuant to the provisions of this Article XII, Article XIII, provisions of this Agreement that relate to sale of all or part of the Purchased Assets to a purchaser other than the ~~Buyer, including without limitation to a Qualified Bidder other than~~ Buyer, and any other provisions of this Agreement that expressly survive termination), provided, however, that nothing in this Section 12.2 shall relieve Buyer or Seller of any liability for a breach of this Agreement prior to the date of termination. Should Sellers be in breach of any of their representations or warranties contained in this Agreement, Buyer shall be entitled to waive such breach or elect to terminate this Agreement. If Buyer elects to waive such breach and close the transactions contemplated herein, Buyer shall not be entitled to any damages as a result of such breach and shall not be entitled to set off any of the monies it owes to Sellers under this Agreement as a result of such breach of representation or warranty.

ARTICLE XIII
MISCELLANEOUS

13.1 **Survival.** No representations, warranties, covenants and agreements of Seller and Buyer made in this Agreement, including Buyer's assumption of the Assumed Liabilities, shall survive the Closing Date except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for obligations extending after the Closing, or as otherwise expressly provided in this Agreement.

13.2 **Confidential Nature of Information.** The following paragraph is subject to any disclosure requirements under the Bankruptcy Code or imposed by the Bankruptcy Court:

Buyer on the one hand and Sellers on the other hand, each agree that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, at the request of the disclosing party, will return to the other party all copies of nonpublic documents and materials which have been furnished in connection therewith and all transcripts, notes and summaries thereof. Such non-public documents, materials and information shall not be communicated to any third Person (other than to Buyer's and Sellers' counsel, accountants or financial advisors, in each case subject to the recipient's agreement to keep the same confidential). No other party shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Purchased Assets; provided, however, that after the Closing, Buyer may use or disclose any confidential information included in the Purchased Assets or otherwise reasonably related to the Purchased Assets and the Business. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such party from a source other than the disclosing party, (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents or (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed. Notwithstanding clause (iii) of the preceding sentence, in the event that any party is required to disclose any confidential information by applicable law, judicial process or rule of any national securities exchange, it is agreed that the party subject to such requirement will provide the other party with prompt notice of such requirement and such party may seek an appropriate protective order if it so desires.

13.3 **Notices.** Any notices, demands, requests, consents, approvals, reports or other communications required or permitted by this Agreement must be (i) in writing and is deemed given when (a) delivered personally to the recipient, (b) sent by confirmed facsimile before 5:00 p.m. Eastern Time on a Business Day with a copy of such facsimile sent to the recipient by reputable overnight courier service (charges prepaid) on the same day, (c) five (5) days after deposit in the U.S. mail, mailed by registered or certified mail, return receipt requested, postage prepaid, or (d) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); and (ii) addressed to the other party at the address set forth below, or at

such other address as either party may designate from time to time in writing in accordance with this Section.

If to Buyer, to: Pivotal Global Capacity LLC
c/o Pivotal Group, Inc.
3200 E. Camelback Road, Suite 295
Phoenix, AZ 85018
Attention: Jerry Pence
Telephone: 602-956-7200
Facsimile: 602-956-2313
JPence@PivotalGroup.com

with a copy to:

Lewis and Roca, LLP
40 North Central Ave
Phoenix, AZ 85004
Attention: Susan M. Freeman, Esq.
Telephone: 602-262-5756
Facsimile: 602-734-3824
SFreeman@LRLaw.com

~~If to Sellers,
to: Global Capacity Group, Inc., et al.
49 East 52nd Street, 7th Floor
New York, NY 10022
Attention: George A. King, Vice Chairman/President & Chief
Financial Officer, Global Capacity
Telephone: 917-398-0815
Facsimile: _____~~

~~*with a copy to:*~~

If to Sellers,
to: Global Capacity Group, Inc., et al.
200 South Wacker Drive – Suite 1650
Chicago, IL 60606
Attention: Patrick C. Shutt, CEO, Global Capacity
Telephone: 312-660-5097
Facsimile: 312-613-2422

~~and~~ with a copy to:

Heller, Draper, Hayden, Patrick & Horn, L.L.C.
650 Poydras Street - Suite 2500
New Orleans, LA 70130
Attention: Douglas S. Draper
Telephone: 504-299-3333
Facsimile: 504-525-3761

and

Shesky & Froelich Ltd
111 East Wacker Drive – Suite 2800
Chicago, IL 60601
Attention: Mitchell D. Goldsmith
Telephone: (312) 836-4006
Facsimile: (312) 275-7569

13.4 **Successors and Assigns.**

(a) Buyer shall have the right to assign to an Affiliate any of its rights or obligations under this Agreement in whole or in part (including the right to acquire any of the Purchased Assets). In the event of any assignment pursuant to this Section 13.4(a), Buyer shall not be relieved of any liability or obligation hereunder.

(b) Buyer shall have the right to assign this Agreement or any of its rights or obligations hereunder as collateral to any lender of Buyer; provided, however, that no such assignment shall relieve Buyer of its obligations to the Sellers hereunder.

(c) Sellers shall not assign this Agreement or any of their rights or obligations hereunder and any such assignment shall be void and of no effect.

(d) This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto, including any trustee appointed in any of the Bankruptcy Cases or subsequent chapter 7. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided in this Section 13.4.

13.5 **Access to Records after Closing.** For a period of five (5) years after the Closing Date, Sellers and their representatives shall have reasonable access to all of the books and records of the Purchased Assets transferred to Buyer hereunder to the extent that such access may reasonably be required by Sellers in connection with matters relating to or affected by the operations of the Business on or prior to the Closing Date. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours. Sellers shall be solely responsible for any costs or expenses incurred by them pursuant to this Section 13.5. If Buyer shall desire to dispose of any of such books and records prior to the expiration of such five-year period, Buyer shall, prior to such disposition, give Sellers a reasonable opportunity, at

Sellers' expense, to segregate and remove such books and records as Sellers may select. In the event Sellers seek and receive approval from the Bankruptcy Court to abandon or destroy books and records, Sellers shall advise Buyer of said order and Buyer shall be relieved of its obligations under this Section 13.5 and may, in its sole discretion, destroy any and all books and records related to the Business.

13.6 **Entire Agreement; Amendments.** This Agreement (including the Schedules and Exhibits hereto and any management agreement) represents the entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13.7 **Interpretation.** Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. No party shall benefit from any rule construing this Agreement against that party as drafter, and it is acknowledged that the document is jointly drafted.

13.8 **Expenses.** Each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants, except as otherwise provided in this Agreement.

13.9 **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

13.10 **Execution in Counterparts; Facsimile and E-mail Delivery.** This Agreement may be delivered via facsimile or e-mail transmission of an executed counterpart of or signature page to this Agreement and may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same

agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each of Sellers and Buyer and any facsimile, e-mail pdf or photocopy of an executed counterpart of or signature page to this Agreement shall be given the same effect as the original.

13.11 **Further Assurances.** On and after the Closing Date (i) Sellers shall deliver to Buyer such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may reasonably request or as may be otherwise reasonably necessary to vest in Buyer all the right, title and interest of Sellers in, to or under any or all of the Purchased Assets, and (ii) Sellers shall take all steps as may be reasonably necessary to put Buyer in actual possession and control of all the Purchased Assets and to obtain the full benefit thereof.

13.12 **Governing Law; Forum.** This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court or the Bankruptcy Court accepts jurisdiction, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, any state or federal court having competent jurisdiction in Delaware.

13.13 **Waiver of Jury Trial.** EACH PARTY HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

13.14 **Negotiated Agreement.** Each of the Sellers and Buyer acknowledges that it has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that, if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any party because such party or its representatives drafted such provision.

|

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year that above written.

SELLERS:

CAPITAL GROWTH SYSTEMS, INC.

By: _____
Name:
Title:

20/20 TECHNOLOGIES, INC.

By: _____
Name:
Title:

20/20 TECHNOLOGIES I, LLC

By: _____
Name:
Title:

CENTREPATH, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY GROUP, INC.

By: _____
Name:
Title:

CAPITAL GROWTH ACQUISITION, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY DIRECT, LLC, (GCD)

By: _____
Name:
Title:

NEXVU TECHNOLOGIES, LLC

By: _____
Name:
Title:

FNS 2007, INC.

By: _____
Name:
Title:

GLOBAL CAPACITY HOLDCO, LLC

By: _____
Name:
Title:

BUYER:

PIVOTAL GLOBAL CAPACITY, LLC,
an Arizona limited liability company

By: FFN Investments, LLC
an Arizona limited liability company,
Its: Sole Member

By: Pivotal Capital Corporation,
an Arizona corporation
Its: Manager

By: _____
Richard Garner
Its: Treasurer

Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	1/12/2011 6:15:07 PM
Comparison Time	14.44 seconds
compareDocs version	v3.4.2.59

Sources	
Original Document	[#2272893] [v1] APA final 10/18.doc
Modified Document	[#2272893] [v9] Updated Ex. C - APA revised for post-debenture purchase (changes, 3rd set).doc

Comparison Statistics	
Insertions	140
Deletions	68
Changes	106
Moves	0
TOTAL CHANGES	314

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthor
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Track Changes
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate

Document View	Word	Print
Remove Personal Information	Word	False