

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

In re:	)	
	)	
MCSGlobal Incorporated,	)	Case No. 15-11674-BFK
	)	Chapter 11
	)	
Debtor.	)	
<hr/>		

**MOTION FOR ENTRY OF ORDER: (A) APPROVING SALE OF ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES;  
(B) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS; (C) APPROVING SETTLEMENT OF CLAIMS; AND  
(D) PROHIBITING ASSERTION OF ESTATE CLAIMS AGAINST PURCHASER**

Bradford F. Englander (the “Trustee”), chapter 11 trustee for MCSGlobal Incorporated (the “Debtor”), hereby files this *Motion For Entry of Order: (A) Approving Sale of Assets Free and Clear of Liens, Claims, and Encumbrances; (B) Approving Assumption and Assignment of Executory Contracts; (C) Approving Settlement of Claims; and (D) Prohibiting Assertion of Estate Claims Against Purchaser* (the “Motion”) seeking authorization to sell substantially all of the assets of the Debtor and to assume and assign the Debtor’s services contracts to Kellton Tech Solutions, Ltd. (“Kellton”), or its designated assignee, pursuant to 11 U.S.C. § 363 (b) and (f), 11 U.S.C. § 365, and Federal Rules of Bankruptcy Procedure 6004, 6006, and 9011 on the terms and conditions set forth below. In support thereof, the Trustee respectfully states as follows:

---

WHITEFORD, TAYLOR & PRESTON, LLP  
Bradford F. Englander, VSB# 36221  
David W. Gaffey, VSB# 85088  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9081  
(703) 280-3370 (facsimile)

*Counsel for Bradford F. Englander,  
Chapter 11 Trustee*

### **Introduction**

The Trustee files this Motion seeking authority to sell the Debtor's assets to Kellton, and for related relief. This is the second such motion. The Court previously approved the Trustee's motion to sell the Debtor's assets to Mr. Doki. But on the eve of the scheduled closing, Mr. Doki informed the Trustee that he lacked funds to close, and would not proceed despite his prior written representations that he had the necessary funds in hand.

As a result of Mr. Doki's flagrant misrepresentations and willful breach of contract, the Trustee renewed discussions with Kellton and ultimately entered into the Asset Purchase and Sale Agreement that is attached hereto (the "Sale Agreement"). The terms of the Sale Agreement are summarized below in greater detail. In short, the economic terms are substantially the same as the terms of the Doki agreement. The most significant difference is that instead of providing for a release of Mr. Doki and related parties, the Sale Agreement provides for the release by the Trustee of estate claims against Kellton, and a release by Kellton of its claims against the estate.

The Trustee further seeks a bar order prohibiting the assertion or prosecution against Kellton of any estate claims or causes of action by any creditor in this case. The Trustee is not seeking a bar against the prosecution of any genuine third party claim; he seeks only a bar against the assertion of claims that are property of the estate and subject to the Trustee's control. This relief is necessary and appropriate on the facts of this case. After the Debtor filed its chapter 11 petition, the Debtor's largest creditor, ProLink Services, LLC – Holding ("ProLink") filed a complaint against Kellton in the U.S. District Court for the Eastern District of Virginia asserting causes of action that the Trustee believes were property of the estate. At the Trustee's request, ProLink dismissed such complaint without prejudice. But Kellton, understandably, requests assurance that it will not be sued again for claims that are to be released by the Trustee at closing.

Obtaining prompt approval of this Motion is essential. In opposing Kellton's motion to continue the hearing to consider the motion to approve the sale to Mr. Doki, the Trustee in mid-

August informed the Court that, even without considering the administrative expenses of the bankruptcy case, the Debtor's business was operating on the thinnest of margins, and lacked sufficient cash reserves to assure payment of its then-accrued operating expenses. The situation has worsened since then. The Debtor's current liabilities are increasing steadily at the rate of approximately \$10,000.00 per month, and the Trustee has not been in a position to honor employee requests for payment of deferred compensation. The aggregate amount of the deferred compensation claims is approximately equal to the average cash balance in the debtor's operating account. In addition to deferred compensation claims, at any given moment the debtor has an account payable to employees for current salary and wages. The estate's cash on hand generally is barely sufficient to cover the amount of the current accrued salary claims (much less the combined amount of the current and deferred claims). The ability to meet obligations to employees (as well as other post-petition trade creditors) depends on prompt collection of accounts receivable. Any material delay or interruption in collection of revenues could result in the debtor's inability to meet its obligations to its employees and other post-petition trade creditors.

Further, if this case were converted to chapter 7 or if operations were to cease for any reason, substantial administrative claims could arise with respect to the Debtor's obligations under the H1B visa program. These thin operating margins and material risks to going-concern operations exist even without regard to the administrative obligations of the estate for the fees and expenses of the Trustee and other estate professionals. The Debtor is administratively insolvent. Delay in consummating a sale will deepen that insolvency and compound the risk of conversion to chapter 7. Consummation of the proposed sale to Kellton eliminates the business risks, preserves employment opportunities for the Debtor's employees, and provides for the assumption of employee and other post-petition liabilities, including any visa-related liabilities. But time is critical. The Motion must be approved, or the Trustee will have no option but to file a motion seeking Court approval for an orderly wind down of operations.

### **Jurisdiction**

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Facts**

#### **I. Chapter 11 Case**

1. On May 14, 2015, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code, Case No. 15-11674-BFK, in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”). *See* Docket No. 1. No official committee of unsecured creditors has been formed in this case.

2. MCSGlobal is a staffing provider specializing in information technology services located in Sterling, Virginia. MCSGlobal contracted to provide information technology staffing services to customers in the mid-Atlantic region. A list of the customer contracts that remain in effect and are to be transferred to Kellton at closing (the “Customer Contracts”) is attached hereto as Exhibit A.

3. On May 15, 2015, Suresh Doki (“Mr. Doki”) was designated by the Court to perform the duties imposed upon the debtor by the title 11 of the United States Code (the “Bankruptcy Code”). *See* Docket No. 5.

4. Prior to the Petition Date, Mr. Doki was the chief executive officer of the Debtor.

5. On May 28, 2015, the Court filed its *Notice of Chapter 11 Bankruptcy Case* establishing September 16, 2015, as the deadline for all non-governmental entities to file proofs of claim in the Debtor’s case (the “Claims Bar Date”). *See* Docket No. 17.

6. On October 20, 2015, creditor ProLink Services, LLC-Holding (“ProLink”) filed its *Motion to Convert Debtor’s Case to One Under Chapter 7 and Memorandum in Support Thereof* (the “Motion to Convert”) requesting that the Court convert the Debtor’s case to a case under chapter 7 of the Bankruptcy Code. *See* Docket No. 31.

7. On November 19, 2015, ProLink filed a complaint against Kellton in the United States District Court for the Eastern District of Virginia, case no. 1:15-cv-01547-TSE-IDD (the “ProLink Litigation”), asserting claims and causes of action for breach of fiduciary by Kellton in its capacity as the sole shareholder of the Debtor (Count I), and fraudulent conveyance under Virginia Code § 55-80 (Count II).

8. On January 28, 2016, the Court entered its *Order* and accompanying *Findings of Fact and Conclusions of Law* denying the Motion to Convert and directing the Office of the United States Trustee to appoint a chapter 11 trustee in this case. *See* Docket Nos. 54, 55.

9. On February 10, 2016, the Office of the United States Trustee appointed the Trustee as the chapter 11 trustee in this case. *See* Docket No. 62.

10. On February 18, 2016, the Court entered its Order confirming the appointment of the Trustee. *See* Docket No. 65.

## **II. Investigation of the Debtor**

11. Upon his appointment, the Trustee conducted an in-depth investigation of the assets, liabilities, finances, and operations of the Debtor.

12. As part of his investigation, the Trustee reviewed and analyzed all transfers between the Debtor and both Mr. Doki and his affiliates, as well as potential causes of action against Mr. Doki and his affiliates.

13. The Trustee also reviewed and analyzed all transfers between the Debtor and Kellton, which owned the Debtor until fall of 2014. In connection with this review, on March 3, 2016, the Trustee filed his *Motion for Authority to Conduct Examination Pursuant to Bankruptcy Rule 2004* (the “2004 Motion”) seeking authority to examine Kellton and certain parties related to Kellton with respect to, among other issues, the operations of the Debtor during Kellton’s ownership and transfers between the Debtor and Kellton (and its affiliates). *See* Docket No. 74.

14. On March 16, 2016, the Court entered an order granting the 2004 Motion. *See* Docket No. 81.

15. On March 25, 2016, the Trustee served on Kellton a subpoena (the “Kellton Subpoena”) demanding the production of documents.

16. Between April and July 2016, Kellton provided the Trustee with documents pursuant to the Kellton Subpoena. However, the documents provided by Kellton were insufficient to properly evaluate and analyze the transfers between the Debtor and Kellton (and its affiliates) and any causes of action that the Debtor may have against Kellton or any of its affiliates.

17. Upon his appointment, the Trustee also initiated discussions with Kellton and ProLink regarding the ProLink Litigation. As the claims asserted in the ProLink Litigation are property of the Debtor’s bankruptcy estate, the Trustee requested that ProLink dismiss the ProLink Litigation without prejudice. Kellton did not object to the dismissal. On June 30, 2016, ProLink filed its *Notice of Voluntary Dismissal* dismissing the ProLink Litigation without prejudice. *See* Case No. 1:15-cv-01547-TSE-IDD, Docket No. 25.

### **III. Offers to Purchase the Debtor’s Assets**

18. The Trustee determined in the exercise of his business judgment that a sale of substantially all of the assets of the Debtor was in the best interests of the Debtor and its estate.

19. The Trustee identified Mr. Doki and Kellton as the two likely potential buyers for the Debtor, and solicited offers to purchase the Debtor’s assets from both. Kellton and Mr. Doki each submitted offers to purchase the Debtor’s assets, both of which included a release of the estate’s claims against the buyer.

20. The Trustee also sought to determine whether a business broker would be interested in undertaking an engagement to sell the Debtor’s operating assets. The Trustee contacted Stephen Karbelk (“Mr. Karbelk”) at Auction Markets LLC and provided him with requested information concerning the Debtor and its finances and operations. Mr. Karbelk declined to move forward with any engagement with respect to the Debtor.

21. The Trustee further spoke with two parties that operate companies similar to the Debtor to determine if the parties would be interested in acquiring the Debtor's assets. Neither party was interested in making an offer.

#### **IV. Proposed Sale to Mr. Doki**

22. Given that the Trustee lacked sufficient information from Kellton to properly evaluate its offer to purchase the Debtor's assets – and in particular the release of claims against Kellton that was part of Kellton's proposal – the Trustee determined that the interests of the Debtor and its estate were best served by a sale of substantially all of the assets of the Debtor to Mr. Doki.

23. On July 22, 2016, the Trustee filed his *Motion to Approve Sale of Assets, Assumption and Assignment of Executory Contracts, and Settlement of Claims* (the "Doki Sale Motion") seeking authority to enter into an agreement to sell substantially all of the assets of the Debtor to Mr. Doki (the "Doki Sale Agreement"). See Docket No. 110. On August 12, 2016, the Trustee filed a *First Amendment to Purchase and Sale Agreement*. See Docket No. 126. The hearing to consider the Doki Sale Motion (the "Doki Sale Hearing") was scheduled for August 16, 2016.

24. On August 8, 2016, Kellton filed its Claim 6-1 asserting a claim against the Debtor in the amount of \$431,184.24 on account of a promissory note executed on behalf of the Debtor dated October 18, 2014 (the "Kellton Claim"). On August 8, 2016, Kellton also filed its *Motion to Allow Claim to be Filed After Bar Date* seeking authority to file the Kellton Claim after the expiration of the Claims Bar Date and for the Kellton Claim to be deemed timely filed (the "Motion to Allow Late Claim"). See Docket No. 120.

25. On August 16, 2016, the Court continued the Doki Sale Hearing to September 19, 2016, to permit Kellton to conduct discovery into the bases and justification for the sale.

26. On September 12, 2016, ProLink filed an objection to Kellton's Motion to Allow Late Claim. See Docket No. 163.

27. Following the Doki Sale Hearing on September 19, 2016, the Court approved the Doki Sale Motion.

28. On September 19, 2016, the Court also approved the Motion to Allow Late Claim and deemed the Kellton Claim to be timely filed.

29. On September 23, 2016, the Court entered an order approving the Doki Sale Motion (the “Doki Sale Order”). *See* Docket No. 172.

30. The deadline to close under the Doki Sale Agreement, as extended by the parties on the record at the Doki Sale Hearing, was September 30, 2016.

31. Mr. Doki and the Trustee agreed to a closing date of September 28, 2016.

32. On September 27, 2016, counsel for Mr. Doki informed the Trustee that Mr. Doki would not be able to close by the agreed September 28, 2016, closing date, and likely would require an extension of the September 30, 2016 deadline.

33. On September 29, 2016, the Trustee, Mr. Doki, and their respective counsel met to discuss closing issues. At that time, Mr. Doki informed the Trustee that he would not close on the sale. Mr. Doki asserted that, although he had represented and warranted that he had the requisite funds to close the transaction, the funds subsequently were used for other business purposes and no longer were available. Mr. Doki further asserted that he had the ability to borrow funds to consummate the purchase, but was disinclined to do so. He said that he would consider the matter further. But on September 30, 2016, Mr. Doki informed the Trustee that he would not proceed.<sup>1</sup>

34. On September 30, 2016, the Trustee sent a formal notice to Mr. Doki declaring him in default under the Doki Sale Agreement and terminated the Agreement. A copy of the Trustee’s notice to Mr. Doki is attached hereto as Exhibit B. No response has been received by the Trustee.

---

<sup>1</sup> The Trustee reserves all rights against Mr. Doki and others who have acted in concert with him in connection with his misrepresentations and breach of contract. The Trustee has filed a motion seeking approval to examine Mr. Doki and related parties in connection with the matter and upon completion of such examination intends to take appropriate legal action.



**V. Proposed Sale to Kellton**

35. The Debtor's financial condition has continued to deteriorate since the Doki Sale Hearing. The current liabilities of the Debtor have been increasing each month by approximately \$10,000.00, and, as of the end of October, total \$246,474.58. The current liabilities exceeded the Debtor's cash on hand (\$100,868.99) as of the end of October by a factor of nearly 2.5. Demands for the Debtor's cash have also increased. Employees have requested payment of deferred salary, which liability now totals \$136,746.37. The Debtor's present cash position does not permit the Trustee to honor such requests at this time.

36. Contemporaneously with Mr. Doki's default under the Doki Sale Agreement, the Trustee received additional documents from Kellton pursuant to the Trustee's longstanding discovery request. The recently provided documents permitted the Trustee to substantially complete his review of the estate's potential claims against Kellton (and its affiliates). The Trustee believes that various claims could be asserted against the Kellton entities, most significantly claims for fraudulent transfers under Section 548 of the Bankruptcy Code.

37. Having completed his review and analysis of these additional documents, the Trustee has determined in the exercise of his business judgment that, for the reasons discussed below, the sale of substantially all of the assets of the Debtor and the assumption and assignment of the Debtor's Customer Contracts in effect at closing to Kellton or its designated assignee (the "Buyer") on the terms set forth in the Asset Purchase and Sale Agreement (the "Sale Agreement") attached hereto as Exhibit C is in the best interests of the Debtor and its estate.

**Terms of Sale**

As set forth in the Sale Agreement, the Trustee (referred to as "Seller") proposes to sell substantially all of the assets of the Debtor and to assume and assign the Debtor's Customer Contracts in effect at closing to the Buyer on the following terms and conditions:<sup>2</sup>

---

<sup>2</sup> To the extent that this summary may differ from the terms set forth in the Sale Agreement, the Sale Agreement shall control.

- A. Purchase Price. The purchase price is \$200,000, plus the Assumed Liabilities (defined below).
- B. Free and Clear. The sale shall be free and clear of all liens, claims, and encumbrances, to the extent provided under section 363(f) of the Bankruptcy Code.
- C. Deposit. Simultaneously with the execution and delivery of the Sale Agreement by Buyer, Buyer shall deliver to Seller a deposit of \$30,000 in immediately available funds (the “Deposit”), to be increased to \$100,000 upon court approval of the sale.
- D. Purchased Assets. Buyer shall obtain Seller’s right, title, and interest in and to the assets and rights of any kind, whether tangible or intangible, real or personal, owned by Seller or in which Seller has any interest (other than Excluded Assets), used in the operation of the Debtor, including without limitation, the following:
  - a. Customer Contracts in effect as of closing;
  - b. Accounts receivable and work-in-progress in connection with the Customer Contracts;
  - c. Furniture, fixtures and equipment;
  - d. A copy of all business records pertaining to Purchased Assets; and
  - e. To the extent transferable, all licenses, permits, and other governmental authorizations required to operate the Debtor in the manner presently conducted.
- E. Excluded Assets. The Seller shall retain the following assets:
  - a. Claims and causes of action of the Trustee, MCSGlobal, or its bankruptcy estate, other than accounts receivable arising under the Customer Contracts that are assigned pursuant to the Sale Agreement;
  - b. Claims and causes of action of the Trustee, MCSGlobal or its bankruptcy estate against any or all of Suresh Doki and his affiliates and each of their respective present or former officers, directors, insiders, attorneys and/or other professionals;
  - c. A copy of all books and records of the Debtor;
  - d. Cash on hand;
  - e. The Debtor’s operating bank account at TD Bank; and
  - f. Rights with respect to any income tax refunds or attributes.

F. Assumption of Liabilities. At closing, Buyer shall assume and shall pay when due all debts, obligations, and liabilities of Seller, whether known or unknown or contingent or fixed, other than Excluded Liabilities, existing as of the closing, including without limitation the following (the “Assumed Liabilities”):

- a. All obligations and liabilities accruing, arising out of, or relating to the Customer Contracts, including but not limited to any and all obligations as may exist with respect to the cure of any default and adequate assurance of future performance under or with respect to such contracts;
- b. All unpaid operating expenses and liabilities of the Debtor arising from and after the Petition Date, including without limitation, payroll, payroll taxes, insurance premiums, and post-closing operating expenses;
- c. All immigration related obligations and liabilities including, but not limited to all obligations, liabilities and undertakings arising from or under attestations made with respect to each certified and still effective labor condition application filed by the Seller; and
- d. All obligations specifically undertaken by Buyer pursuant to the other provisions of the Sale Agreement.

G. Excluded Liabilities. Buyer shall not assume the following liabilities:

- a. Claims against the Debtor arising prior to the Petition Date;
- b. The portion of claims for payment of “Deferred Salaries” (but not “Accrued Salaries”) as may be owed to MCSGlobal’s employees or subcontractors that is in excess of \$136,746.37;
- c. Claims as may be owed to, or asserted by or on behalf of, Suresh Doki or any member of his family or any entity affiliated with any of them;
- d. Claims in respect of any liability as to which Seller’s representations in Sections 3.1.2 and 3.1.3 of the Settlement Agreement are applicable;
- e. Claims in respect of any income taxes owed by the Debtor prior to closing; and
- f. Fees and commissions of the Trustee and his court-approved professionals, fees and expenses of Debtor’s counsel, and fees of the United States Trustee.

H. Indemnification. From and after Closing, Buyer shall indemnify Seller, MCSGlobal and its bankruptcy estate, and Seller’s agents, attorneys and other professionals (the “Indemnified Parties”), for any Assumed Liabilities (other than Excluded Liabilities).

- I. Releases. At Closing, Seller, Buyer and Buyer's specified affiliates shall execute a mutual general release of claims against each other.
- J. As Is, Where Is Sale. Except as expressly warranted, the sale is "as is, where is" with all faults, and without any warranty, express or implied.
- K. Agreement Subject to Higher and Better Offers. The Sale Agreement is contingent upon approval of the Bankruptcy Court, and is subject to higher and better offers.

**Comparison of Doki Sale Agreement and Kellton Sale Agreement**

The significant differences between the Doki Sale Agreement and the Kellton Sale Agreement are set forth below.

<b>Term</b>	<b>Doki Sale Agreement</b>	<b>Kellton Sale Agreement</b>
Purchase Price	\$200,000.00, plus Assumed Liabilities	\$200,000.00, plus Assumed Liabilities.
Deposit	\$30,000.00	\$30,000.00, plus an additional \$70,000.00 following the entry of an order approving the Sale Agreement
Excluded Assets	Claims and causes of action of the Trustee, MCSGlobal or its bankruptcy estate against Kellton Tech Solutions, Ltd., Kellton Tech Inc., and each of their respective present or former officers, directors, insiders, attorneys and/or other professionals.	Claims and causes of action of the Trustee, MCSGlobal or its bankruptcy estate against any or all of Suresh Doki and his affiliates and each of their respective present or former officers, directors, insiders, attorneys and/or other professionals.
Transferred Cash	The lesser of (a) \$70,000.00, (b) the gross amount of the next payroll (including payroll taxes and withholdings, less the amount payable to Mr. Kukkala in connection with such payroll) to be made at or following closing, or (c) cash on hand at closing.	None
Assumption of Liabilities	All legal fees and expenses as may be owed or allowed in favor of the Debtor's bankruptcy counsel.	No legal fees and expenses of the Debtor's bankruptcy counsel will be assumed by Kellton.
Excluded Liabilities	All claims against MCSGlobal arising prior to the Petition Date, but only to the extent that such claims (a) were listed by MCSGlobal as creditors in the Schedules filed in the Bankruptcy Case, or (b) were asserted by the filing of a proof of claim filed on or before the applicable claims bar date.	All claims against MCSGlobal arising prior to the Petition Date.

	Fees and commissions of the Trustee and his court-approved professionals.	The portion of claims for payment of “Deferred Salaries” (but not “Accrued Salaries”) as may be owed to MCSGlobal’s employees or subcontractors that is in excess of \$136,746.37; Claims as may be owed to, or asserted by or on behalf of Doki, his insiders and affiliates; and Fees and commissions of the Trustee and his court-approved professionals, fees and expenses of Debtor’s counsel, and fees of the United States Trustee.
--	---	--

### Argument

#### **I. The Sale to Kellton is in the Best Interest of the Debtor**

A trustee may sell assets outside of the ordinary course of business pursuant to 11 U.S.C. § 363(b) if there is a sound business justification for doing so. *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2nd Cir. 1983); *In re Alpha Natural Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) (stating that “[c]ourts apply the deferential business judgment test when analyzing transactions under § 363(b)(1)”) (citing *Lionel Corp.*). *See also McDow v. Official Committee of Equity Security Holders of Criimi Mae, Inc.*, 247 B.R. 146, 149 (D. Md. 1999) (stating that a “court may authorize the use of estate property other than in the ordinary course of business when some business justification for doing so exists”). A trustee’s justification warrants judicial approval if it “makes good business sense” (i.e., if ‘the creditors as a whole . . . benefit’). *Colfin Bulls Funding A, LLC v. Paloian (In re Dvorkin Holdings, LLC)*, 2016 U.S. Dist. LEXIS 32916 (N.D. Ill. Mar. 14, 2016) (citing *Retired Pilots Ben. Prot. Ass’n v. United Airlines, Inc.*, 443 F.3d 565, 571-72 (7th Cir. 2006)).

Further, Bankruptcy Rule 9019(a) provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Compromises and settlements “are a normal part of a bankruptcy case.” *Plaza at Latham Assocs. v. Citicorp N. Am., Inc.*, 150 B.R. 507, 514 (N.D.N.Y. 1993). The decision whether to approve a

compromise under Bankruptcy Rule 9019 is committed to the discretion of the Court, which must determine if the compromise or settlement is fair and equitable. *See In re Frye*, 216 B.R. 166, 174 (Bankr. E.D. Va. 1997); *In re Marvel Entm't Group, Inc.*, 222 B.R. 243 (D. Del. 1998). The Court is not required to conduct a “mini-trial” of the underlying case, but instead must only decide whether the proposed settlement falls “below the lowest point in the range of reasonableness.” *In re Austin*, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995) (citations omitted). *See also In re Jasmine, Ltd.*, 258 B.R. 119, 123 (D.N.J. 2000).

Factors to be considered when evaluating a settlement under Bankruptcy Rule 9019 include: (i) the probability of success in the litigation; (ii) the complexity, expense and likely duration of the litigation; (iii) all other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise, including potential difficulties in collection, if any; and (iv) whether the proposed compromise is fair and equitable to the debtor, its creditors, and other parties in interest. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Frye*, 216 B.R. at 174; *In re Austin*, 186 B.R. at 400. *See also In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (compromises are favored in bankruptcy to minimize litigation and expedite the administration of a bankruptcy estate). Integral to the process of evaluating proposed settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” *TMT Trailer Ferry*, 390 U.S. at 425. But, “the settlement may be approved even if the court finds it likely that the trustee would ultimately succeed in the litigation.” *In re Austin*, 186 B.R. at 400.

Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The standard governing whether to approve a motion pursuant to § 365 of the Bankruptcy Code is the business judgment test, which requires a showing that the proposed course of action will be advantageous to the estate and the decision was based on sound business judgment. *Lubrizol Enterprises, Inc. v Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *In re Constant Care*

*Community Health Center, Inc.*, 99 B.R. 697, 702 (Bankr. D. Md. 1989) (“The issue is ‘whether the decision of the debtor that rejection will be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’”) (citation omitted).

In this case, the Trustee, in the proper exercise of his business judgment, has determined that the proposed sale to Kellton of substantially all of the Debtor’s assets free and clear of liens, encumbrances, or any other such interests, the assumption and assignment of the Customer Contracts in effect at closing, and the settlement of claims of the estate are in the best interest of the estate. The Trustee has thoroughly investigated the assets, liabilities, and finances of the Debtor. The Trustee has overseen the operations of the Debtor’s business for more than eight months, and is familiar with the Debtor’s business and operations. The Trustee has determined that the proposed purchase price likely is the highest and best price, and that continued operations in chapter 11 are not viable.

The Trustee has investigated possible claims that could be brought against Kellton. While various claims and theories could be asserted, the principal claims would be for avoidance of fraudulent transfers under Section 548 of the Bankruptcy Code. Upon reviewing the Debtor’s records and documents provided by Kellton pursuant to the Kellton Subpoena, the Trustee has identified the following facts relevant to the evaluation of potential claims of the estate:

- The Debtor made transfers totaling \$1,990,428.40 to subsidiaries of Kellton after May 14, 2013. *See Exhibit D.*
- The Debtor received transfers totaling \$1,342,222.96 from subsidiaries of Kellton after May 14, 2013. *See Exhibit D.*
- The Debtor received a total of \$500,000.00 from Itria Ventures LLC (“Itria Ventures”) pursuant to receivables sale agreements. The Debtor repaid \$242,412.88 in principal to Itria Ventures. *See Exhibit E.*
- The Debtor received a total of \$918,376.37 from Savoy Bank pursuant to a loan agreement. The Debtor repaid \$400,000.00 in principal to Savoy Bank. *See Exhibit F.*
- Neither Savoy Bank nor Itria Ventures have asserted a claim against the Debtor in this case.

- Kellton has asserted that it or its subsidiaries assumed \$775,963.00 in debt owed by the Debtor to Savoy Bank and Itria Ventures in connection with the sale of the Debtor to Mr. Doki's company (ECP).
- At the time that Kellton or its subsidiaries allegedly assumed \$775,963.00 in debt owed by the Debtor to Savoy Bank and Itria Ventures, Kellton imposed a promissory note in the face amount of \$400,171.00 on the Debtor.
- At the time the Debtor made transfers to Kellton's subsidiaries, the Debtor was subject to a claim that ultimately resulted in a judgment in favor of ProLink totaling \$774,729.22 in addition to the claims of the lenders, Savoy Bank and Itria Ventures. Kellton knew of these liabilities and the financial distress that they imposed on the Debtor. Indeed, Kellton threatened to put the Debtor into bankruptcy, and ultimately forced Doki to buy back the company under threat of litigation.

While the Trustee is confident in his position and the avoidability of the transfers to Kellton and its subsidiaries, he recognizes that the outcome of any litigation is uncertain, and that the cost of litigation can be high. Basic legal issues that are central to avoiding fraudulent transfers also are subject to varying approaches by the courts. For example, many courts determine whether a debtor received reasonably equivalent value for a transfer as of the date a transfer is made. *McCarthy v. 88 La Gorce, LLC (In re El-Atari)*, 2012 Bankr. LEXIS 4043, at \*8 (Bankr. E.D. Va. Feb. 7, 2012); *Lisle v. John Wiley & Sons, Inc. (In re Wilkinson)*, 196 Fed. Appx. 337, 342 (6th Cir. Ky. 2006); *Wisper II, LLC v. Abernathy (In re Wisper, LLC)*, 2015 Bankr. LEXIS 4083, at \*163 (Bankr. W.D. Tenn. Dec. 2, 2015) ("For purposes of § 548(a)(1)(B), a Court must determine whether the debtor received reasonably equivalent value at the time of the transfer."). Other courts take a broader view of a transaction and consider the totality of the circumstances surrounding the allegedly fraudulent transfer, including indirect benefits received by the debtor, when determining whether a debtor received reasonably equivalent value. *See, e.g. Xtra Petroleum Transp., Inc. v. Brad Hall & Assocs. (In re Xtra Petroleum Transp., Inc.)*, 2012 Bankr. LEXIS 1591 (Bankr. D.N.M. Apr. 11, 2012); *In re Chase*, 328 B.R. 675, 678-683 (Bankr. D. Vt. 2005) ("As a general rule, this Court agrees . . . that a totality of the circumstances, subjective analysis is generally the soundest approach to ascertaining reasonably equivalent value."). Further, the Trustee recognizes that he must prove that the Debtor was insolvent at the time of the transfers, which will require the retention of a financial expert. The



Trustee has been responsible for, or closely involved with, the prosecution of hundreds of fraudulent transfer cases over the course of his 30-year career. In his judgment, the costs of litigating an avoidance action against Kellton in this case will be substantial, and likely would exceed the benefits of the proposed sale and settlement.

In the Trustee's business judgment, the purchase price of \$200,000.00, the claims retained by the estate, and the avoidance of the Assumed Liabilities constitute a fair resolution of the potential litigation claims against Kellton in light of the high anticipated litigation costs and the risks inherent in litigation. In addition to the cash paid to the estate, the estate will retain both its cash on hand and its claims and causes of action against others, including against Mr. Doki.

Additionally, the Sale Agreement allows the estate to avoid substantial liabilities that otherwise would be asserted against it, including:

- Assumption by Kellton of all current and future obligations under the Customer Contracts (including any obligations with respect to cure and adequate assurance of future performance);
- Assumption and payment by Kellton of all current payroll and related expenses of the Debtor;
- Assumption and payment by Kellton of up to \$136,746.37 in deferred salary obligations as may be owed by the Debtor. The Debtor failed to include these liabilities, most of which are post-petition, in its monthly operating reports. The Trustee discovered such liabilities following his appointment and disclosed them on the balance sheets appended to the monthly operating reports following such discovery;
- Release of Kellton's \$431,184.24 proof of claim. The asserted liability is based on a promissory note signed by Mr. Doki. Mr. Doki failed to disclose the existence of such claim in the Debtor's schedules; and
- Avoidance of possible immigration and H1B visa obligations, and indemnification by Kellton for any such liabilities as may arise or be asserted.

The combination of the purchase price, the claims and other property retained by the estate, and the elimination of and/or indemnification for liabilities cause the Settlement Agreement to be in the best interests of the Debtor, its creditors, and the estate.

## **II. Sale Free and Clear**

Sales pursuant to 11 U.S.C. § 363(b) may be completed free and clear of all liens, encumbrances, or any other such interests in the property to be sold if:

- a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b) such entities consent;
- c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property
- d) such interest is in bona fide dispute; or
- e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). The language of § 363(f) is in the disjunctive, so that a sale free and clear of interests can be approved if any of the aforementioned conditions is met. *In re Heine*, 141 B.R. 185, 189 (Bankr. D.S.D. 1992); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

Section 363(f) permits the sale free and clear of all liens, encumbrances in this case. A search of UCC-1 financing statements filed with respect to the Debtor reveals only one lien in favor of Savoy Bank. *See Exhibit G*. The Trustee disputes the validity of the lien in favor of Savoy. The lien was incurred when the Debtor was owned by Kellton. The Trustee has been advised by Kellton that the lien was released in connection with the sale of the Debtor from Kellton to Mr. Doki, and that Savoy Bank does not claim an interest in the Debtor's assets. Based upon these facts, the Court previously determined in the Doki Sale Order that the Savoy in favor of Savoy is in bona fide dispute. Accordingly, the property may be sold free and clear pursuant to section 363(f)(3).

## **III. Cure and Adequate Assurance**

11 U.S.C. § 365(b)(1) provides that:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(1)(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). *See also In re Computer Learning Ctrs., Inc.*, 268 B.R. 468, 473 (Bankr. E.D. Va. 2001) (in order to assume a contract, a trustee is “required to cure the defaults, compensate for any damages and provide adequate assurance of future performance.”).

Here, Kellton is assuming responsibility for “all obligations as may exist with respect to the cure of any default and adequate assurance of future performance under or with respect to [Customer Contracts]” pursuant to section 2.3(A) of the Sale Agreement. The Trustee is not aware of any default in the Customer Contracts that must be cured in order for the contracts to be assumed and assigned to Kellton. In the event that any cure payment is necessary, however, Kellton will be required to pay any cure amounts. Further, Kellton is the former owner of the Debtor and generally is familiar with the Customer Contracts. Kellton therefore will be able to provide adequate assurance of future performance under the Customer Contracts in effect at closing.

#### **IV. Relief From Liability Under 11 U.S.C. § 365(k)**

11 U.S.C. § 365(k) provides that “[a]ssignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” Because the Trustee is assigning the Customer Contracts in effect at closing in their entirety to Kellton, the Trustee requests that any

order granting this Motion provide that the Trustee and estate are relieved of any liability for any breach of the Customer Contracts occurring after the assignment.

#### **V. Injunction Against Pursuit of Claims of the Estate**

“A bankruptcy trustee is vested with the exclusive power to raise legal claims on behalf of the estate.” *Estate of Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211*, 443 F.3d 1172, 1175 (9th Cir. 2006). *See also Husvar v. Rapoport*, 430 F.3d 777, 780 (6th Cir. 2005) (finding that “plaintiffs lacked standing to prosecute the derivative action described in the complaint because, in the absence of abandonment, only the debtor-in-possession of Mosler’s bankruptcy estate (the bankruptcy trustee) can prosecute such a claim”); *Parker v. Wendy’s Int’l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004) (“[A] trustee, as the representative of the bankruptcy estate, is the proper party in interest, and is the only party with standing to prosecute causes of action belonging to the estate.”).

It is well established that “a bankruptcy court generally may not enjoin creditor claims against [a] third party when those claims are independent and ‘personal to the creditor.’” *In re Mrs. Weinberg’s Kosher Foods, Inc.*, 278 B.R. 358, 365-66 (Bankr. S.D.N.Y. 2002). Where a trustee releases claims of the estate, however, third-parties thereafter are prohibited from raising such claims in future litigation. *Emoral, Inc. v. Diacetyl (In re Emoral, Inc.)*, 740 F.3d 875 (3d Cir. 2014); *Fox v. Picard (In re Madoff)*, 848 F. Supp. 2d 469, 488 (S.D.N.Y. 2012) (stating that “a bankruptcy court may enjoin actions that are derivative or duplicative of claims brought by the trustee, or that could have been brought by the trustee in the first instance”). A court is empowered to enforce this prohibition through a permanent injunction barring the future prosecution of “duplicative or derivative of claims belonging to the Trustee.” *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 2011 Bankr. LEXIS 5555 (Bankr. S.D.N.Y. Jan. 13, 2011) (issuing a permanent injunction “precluding prosecution of actions by third parties against the Picower BLMIS Accounts or the Picower Releasees that are duplicative or derivative of claims belonging to the Trustee”). *See also In re Bernard L. Madoff Inv. Secs. LLC*, 740 F.3d 81, 89 (2d Cir. 2014)

(upholding an injunction that, “by its own terms, is limited to third-party claims based on derivative or duplicative liability or claims that could have been brought by the Trustee”).

The imposition of an injunction barring third-parties from pursuing claims of the estate against Kellton is necessary and appropriate in this case. ProLink already has filed a complaint against Kellton asserting causes of action that are property of the estate. Kellton, quite understandably, requires that the Trustee obtain an affirmative prohibition against the assertion by third-parties of the claims being settled. Such a prohibition is entirely appropriate and within the authority of this Court. *See In re Bernard L. Madoff Inv. Secs. LLC*, 740 F.3d at 89. The Trustee expressly does not seek a third-party release discharging individual claims belonging to third-parties. Release of third-party claims are disfavored. *See, e.g. Nat’l Heritage Found., Inc. v. Highbourne Found.*, 2014 U.S. App. LEXIS 12144 (4th Cir. June 27, 2014). The Trustee seeks only to prohibit third-parties from privately asserting claims belonging to the Debtor’s bankruptcy estate that are being settled through the Settlement Agreement. Kellton has specifically negotiated for and is entitled to the peace of mind that this injunction will provide.

#### **VI. Name Change and Caption**

The Trustee requests that effective upon the closing, the Debtor shall, subject to applicable non-bankruptcy law, change its name to a name to be determined by the Trustee prior to closing. Thereafter, all captions, pleadings, and filings in this case shall be changed to reflect the new name of the Debtor.

#### **VII. Waiver of Stay Pursuant to Bankruptcy Rule 6004(h) and 6006(d)**

To facilitate a timely closing, the Debtor seeks a waiver of the fourteen (14) day stay pursuant to Bankruptcy Rules 6004(h) and 6006(d). The Sale Agreement provides that closing must occur on or before December 31, 2016. The hearing to consider this Motion is scheduled to be held on December 20, 2016. Without a waiver of the fourteen (14) day stay, the Trustee and Kellton will not be able to close under the Sale Agreement by the December 31, 2016 deadline. Further, the continuation of operations by the Trustee would impose unnecessary expense on, and risk to, the estate. As set forth above, the Debtor’s financial condition is

deteriorating. To prevent any delay from threatening the closing, the Trustee requests that the fourteen day stay be waived.

**Conclusion**

WHEREFORE, the Trustee respectfully requests that the Court enter an order (1) granting the Motion; (2) approving and authorizing the Trustee to enter into and perform the Sale Agreement; (3) authorizing the sale of the Debtor's assets and the assumption and assignment of the Customer Contracts in effect as of closing to Kellton or its designated assignee as set forth in the Sale Agreement; (4) requiring that parties to the Customer Contracts in effect at closing file a claim asserting any alleged cure amount within thirty (30) days following the entry of the order; (5) relieving the Trustee and the estate from any liability for any breach of any Customer Contract assigned to Kellton pursuant to the Sale Agreement; (6) authorizing the Trustee to change the name of the Debtor upon closing to a name to be determined by the Trustee; (7) enjoining all persons with notice of this Motion from asserting against Kellton or its affiliates any claim or cause of action that is property of the Debtor's estate and released by the Trustee at closing; (8) waiving the fourteen (14) day stay pursuant to Bankruptcy Rules 6004(h) and 6006(d); and (9) granting such other and further relief as the Court deems necessary and proper.

Dated: November 23, 2016

WHITEFORD TAYLOR & PRESTON, LLP

/s/ David W. Gaffey

Bradford F. Englander, Esq., VSB #36221

David W. Gaffey, Esq., VSB #85088

3190 Fairview Park Drive, Suite 800

Falls Church, Virginia 22042

Telephone: (703) 280-9081

Facsimile: (703) 280-3370

Email: [benglander@wtplaw.com](mailto:benglander@wtplaw.com)

*Counsel to Bradford F. Englander, Chapter 11 Trustee*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2016, I caused a copy of the foregoing Motion to be served via the Court's Electronic Case Filing System on all parties requesting notice thereby, and by first-class mail, postage prepaid, on the parties on the attached service list.<sup>3</sup>

/s/ David W. Gaffey  
Counsel

2193968

---

<sup>3</sup> Pursuant to Local Bankruptcy Rule 5005-1(8)(C), the service list is not being served with the mailed version of this pleading, but is available electronically via PACER as an attachment to the version filed with the Court.

**Exhibit A**

**Customer Contracts Presently in Effect**

<b><u>Customer</u></b>	<b><u>Employee Name</u></b>
Kforce, Inc.	Aggi R. Devarapalli
Vdart	Ayyappa Masetti
K2 Partnering	Denny J. Karackadu
RTP Technologies	Madhuri Pydimukkala
M.I.S.I	Mallikarjuna R. Akkinpalli
eTeam	Naveen Velluri
Belcan Tech Services	Rajesh Arumugam
Eliassen Group	Satyakam Saranga
TekSystems	Fnu Shamimuddin
ThyssenKrupp	Srikanth Ramineni
Logic House	Swati Aneja
Diverse Technologies	Venkatarao Nelluri
SupremeSoft, Inc.	Haritha Aide
Innocore Solutions, Inc.	Venugopal Kukkala



**Exhibit B**

**September 30, 2016, Letter to Counsel to Suresh Doki**

WHITEFORD, TAYLOR & PRESTON L.L.P.

DAVID GAFFEY  
DIRECT LINE (703) 280-3374  
DIRECT FAX (202) 327-6158  
DGaffey@wtplaw.com

3190 FAIRVIEW PARK DRIVE, SUITE 800  
FALLS CHURCH, VIRGINIA 22042-4510

MAIN TELEPHONE (703) 280-9260  
FACSIMILE (703) 280-9139

BALTIMORE, MD  
BETHANY BEACH, DE\*  
BETHESDA, MD  
COLUMBIA, MD  
DEARBORN, MI  
FALLS CHURCH, VA  
LEXINGTON, KY  
PITTSBURGH, PA  
ROANOKE, VA  
TOWSON, MD  
WASHINGTON, DC  
WILMINGTON, DE\*

[WWW.WTPLAW.COM](http://WWW.WTPLAW.COM)  
(800) 987-8705

September 30, 2016

Via U.S. Mail and E-Mail

Ms. Dawn C. Stewart, Esq.  
The Stewart Law Firm, PLLC  
1050 Connecticut Ave., NW, 10th Floor  
Washington, DC 20036-5303  
dstewart@thestewartlawfirm.com

Re: In re MCSGlobal Incorporated (Case No. 15-11674-BFK)

Dear Dawn:

During your phone call this morning with Brad Englander, Chapter 11 Trustee (the "Trustee") of MCSGlobal Incorporated (the "Debtor"), you advised us that Mr. Doki will not close on the sale of the Debtor. Accordingly, this letter is to notify Mr. Doki that he is in default under the Asset Purchase and Sale Agreement dated July 20, 2016, as amended (the "Sale Agreement").

On September 23, 2016, I received an email from you agreeing to a closing date under the Sale Agreement of September 28, 2016. On September 27, 2016, at 8:43 a.m., you left the Trustee a voicemail stating that Mr. Doki had informed you that he would not be able to close on the agreed date, and that he may not be able to close until next week. When you spoke with the Trustee later that morning at 11:02 a.m., you stated that Mr. Doki had expected to receive a wire transfer on September 23, 2016, from a "friend," but the wire transfer was not received and that the "friend" was not returning Mr. Doki's calls. You further stated that the money that Mr. Doki on August 16, 2016, had identified and represented to the Trustee as being available to pay the remaining purchase price under the Sale Agreement had been used for another purpose.

The Trustee requested an in-person meeting with Mr. Doki to discuss the delay. We met at our offices yesterday, September 29, 2016. During the meeting, Mr. Doki stated that he did not have sufficient funds on hand to close under the Sale Agreement, that he

Ms. Dawn C. Stewart, Esq.  
September 30, 2016  
Page 2

has the ability to borrow such funds, but that he chose not to borrow the funds because he was concerned about his ability to repay such borrowing. You requested a private conference with Mr. Doki. After the private conference, you informed us that Mr. Doki had left the meeting to discuss this matter with his wife and brother and had requested an additional day to advise us of his intentions. You further stated that you were unaware until you arrived at our building for the meeting that Mr. Doki was considering not closing.

Today, you informed the Trustee of Mr. Doki's final decision and position on the matter. You stated that Mr. Doki was able to obtain the funds if he wanted to do so, but has elected not to close under the Sale Agreement. You stated that he does not want to borrow money to close under the Sale Agreement.

At this point, we question whether Mr. Doki has - or ever had - the ability to fulfill his contractual commitments under the Sale Agreement. Further proceedings likely will shed light on this issue. In any event, Mr. Doki is in default under the Sale Agreement. The Trustee hereby terminates Mr. Doki's rights under the Sale Agreement. The Trustee reserves all rights with respect to Mr. Doki's default and breach, including but not limited to breach of contract, consequential damages, and the forfeiture of Mr. Doki's deposit. The Trustee also reserves all rights and remedies against Mr. Doki and his relatives with respect to all other claims and causes of action, some of which we discussed yesterday.

As the Trustee mentioned yesterday, he intended to, and now has, terminated coverage of Mr. Doki and his dependents under all of the Debtor's insurance policies (including health, dental, and vision).

Sincerely,

  
David Gaffey

DWG:dwg

**Exhibit C**

**Sale Agreement**

## **ASSET PURCHASE AND SALE AGREEMENT**

This Asset Purchase and Sale Agreement (the “Agreement”) is made as of this 23rd day of November, 2016, by and between (1) BRADFORD F. ENGLANDER, ESQUIRE (the “Trustee,” or “Seller”), in his capacity as Chapter 11 Trustee for MCSGlobal Incorporated (“MCSGlobal”), a Virginia corporation, and (2) KELLTON TECH, INC., a Delaware corporation (“Buyer”).

### **Recitals**

A. MCSGlobal is a staffing provider specializing in information technology services. MCSGlobal is located in Sterling, Virginia.

B. MCSGlobal contracted to provide information technology staffing services to clients in the mid-Atlantic region. A list of the information technology services contracts and arrangements to which MCSGlobal currently is a party is attached hereto as **Exhibit A** (the “Customer Contracts”).

C. On May 14, 2015 (the “Petition Date”), MCSGlobal filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”), Case No. 15-11674-BFK (the “Bankruptcy Case”).

D. On February 18, 2016, the Bankruptcy Court entered an order appointing Seller as the chapter 11 trustee in MCSGlobal’s bankruptcy case.

E. Following an investigation of MCSGlobal’s assets and finances, the Trustee has determined that the sale of the Purchased Assets, as hereinafter defined, and the assumption and assignment of the Customer Contracts to the Buyer, subject to the approval of the Bankruptcy Court, is in the best interest of MCSGlobal and its estate.

F. Buyer, through an affiliated entity, previously owned the stock of MCSGlobal, and is generally familiar with MCSGlobal’s assets, liabilities and operations.

### **Terms and Conditions**

In consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereby agree as follows:

#### **1. Sale and Purchase.**

1.1 Purchased Assets. Seller hereby agrees to sell, transfer, and convey to Buyer the Purchased Assets, as such term is defined below, and to assume and assign to Buyer the Customer Contracts in effect as of Closing; and Buyer hereby agrees to purchase and accept the Purchased Assets from Seller, and to take assignment of the Customer Contracts, for the

Purchase Price on and subject to the other terms and conditions set forth herein. The sale shall be free and clear of all liens, claims, and encumbrances, to the extent provided under section 363(f) of the Bankruptcy Code.

“Purchased Assets” shall mean Seller’s right, title and interest in and to the assets and rights of any kind, whether tangible or intangible, real or personal, owned by Seller or in which Seller has any interest (other than Excluded Assets), used in the operation of MCSGlobal, including without limitation, the following:

- A. Customer Contracts in effect as of Closing;
- B. Accounts receivable and work in process in connection with the Customer Contracts;
- C. All of the furniture, fixtures, furnishings, machinery, equipment, inventory, and supplies owned by MCSGlobal as of the date hereof, plus all additions, replacements or deletions following the date hereof in the ordinary course of MCSGlobal’s business;
- D. A copy of all business records pertaining to Purchased Assets, including without limitation records pertaining to customers, suppliers, and employees of MCSGlobal, subject to the right of Seller to retain and use the original records in connection with his role as trustee of MCSGlobal; and
- F. To the extent transferable, all licenses, permits, and other governmental authorizations required to operate MCSGlobal in the manner presently conducted.

“Excluded Assets” shall mean the following assets:

- A. Claims and causes of action of the Trustee, MCSGlobal or its bankruptcy estate, including without limitation those arising under the Bankruptcy Code; provided, however, that (i) accounts receivable arising under the Customer Contracts that are assigned pursuant to this Agreement shall not constitute Excluded Assets, and (ii) the exclusion of claims and causes of action of the Trustee does not limit or otherwise affect the validity and enforceability of the “Release” (as hereinafter defined).
- B. Claims and causes of action of the Trustee, MCSGlobal or its bankruptcy estate against any or all of Suresh Doki and his affiliates and each of their respective present or former officers, directors, insiders, attorneys and/or other professionals.
- C. Cash on hand at Closing (as defined below).
- D. A copy of all books and records of MCSGlobal.
- E. MCSGlobal’s operating bank account at TD Bank.
- F. Rights with respect to any income tax refunds or attributes.

2. Purchase Price. The purchase price for the Purchased Assets (the “Purchase Price”) shall be Two Hundred Thousand Dollars (\$200,000.00); plus the assumption of those liabilities listed in section 2.3 of this Agreement. The Purchase Price shall, subject to the terms and conditions hereinafter set forth, be paid to Seller by Buyer as follows:

2.1 Deposit. Simultaneously with the execution and delivery of this Agreement by Buyer shall deliver to Seller a deposit of Thirty Thousand Dollars (\$30,000.00) in immediately available funds (the “Deposit”). On the first business day following the entry of the “Sale Order” (as defined in Section 4.1), Buyer shall increase the amount of the Deposit to One Hundred Thousand Dollars (\$100,000.00). The Deposit shall, upon its delivery to Seller by Buyer, be deemed fully earned by Seller and nonrefundable to Buyer except for non-satisfaction of any closing conditions contained in Article IV of this Agreement or otherwise upon a failure by Seller to close in accordance with the terms of this Agreement.

2.2 Payment at Closing. At the consummation of the transactions contemplated herein (the “Closing”), Buyer shall deliver to Seller cash in an amount equal to the Purchase Price less the Deposit, and the Deposit shall be applied by Seller to the Purchase Price. The Purchase Price, subject to any adjustments set forth herein, shall be paid at Closing to Seller, or such other person as Seller may designate in writing, by wire transfer or such other means approved by Seller.

2.3 Assumption of Liabilities. At Closing, Buyer shall assume and shall pay when due the following debts, obligations, and liabilities of Seller other than Excluded Liabilities (as defined below), existing as of the Closing (“Assumed Liabilities”):

- A. All obligations and liabilities accruing, arising out of, or relating to the Customer Contracts, including but not limited to any and all obligations as may exist with respect to the cure of any default and adequate assurance of future performance under or with respect to such contracts;
- B. All unpaid operating expenses and liabilities of MCSGlobal arising from and after the Petition Date, including without limitation, payroll, payroll taxes, insurance premiums, and post-Closing operating expenses;
- C. All immigration related obligations and liabilities including, but not limited to all obligations, liabilities and undertakings arising from or under attestations made with respect to each certified and still effective labor condition application filed by the Seller (“Immigration Matters”); and
- D. All obligations specifically undertaken by Buyer pursuant to the other provisions of this Agreement.

Excluded Liabilities shall mean the following liabilities:

- A. All claims against MCSGlobal arising prior to the Petition Date;
- B. The portion of claims for payment of “Deferred Salaries” (but not “Accrued Salaries”) as may be owed to MCSGlobal’s employees or subcontractors that is in excess of \$136,746.37, which is the amount listed in the balance sheet appended to the monthly operating report filed by Seller in the bankruptcy case (“MOR”) for the month of September, 2016, a copy of which is filed with the Bankruptcy Court at clerk’s docket no. 181 (the “Most Recent MOR”);
- C. Claims as may be owed to, or asserted by or on behalf of, Suresh Doki or any member of his family or any entity affiliated with any of them;
- D. Claims in respect of any liability as to which Seller’s representations in Sections 3.1.2 and 3.1.3 are applicable;
- E. Claims in respect of income taxes owed by MCSGlobal prior to Closing; and
- F. Fees and commissions of the Trustee and his court-approved professionals, fees and expenses of Debtor’s counsel, and fees of the United States Trustee.

From and after Closing, Buyer shall indemnify Seller, MCSGlobal and its bankruptcy estate, and Seller’s agents, attorneys and other professionals (the “Indemnified Parties”), against, and hold them harmless from, any and all claims, liabilities, demands losses, obligations, causes of action, proceedings, judgments, fines, penalties, damages, costs and expenses (including without limitation court costs and attorneys’ fees), and other amounts (including sums paid in settlement of claims) of any and every kind or character, known or unknown, fixed or contingent, that may be imposed upon, incurred by, or asserted against the Indemnified Parties, or any of them, based on, related to, or arising from or in connection with Buyer’s failure to pay when due any Assumed Liabilities (other than Excluded Liabilities). For the avoidance of doubt, the Indemnified Parties do not include (i) Suresh Doki or any member of his family or any affiliate of any of them, or (ii) Prolink Holdings or any person or entity affiliated with, or claiming by, through or under, Prolink Holdings.

### 3. Representations and Warranties.

3.1 Representations and Warranties of Seller. Seller warrants and represents to Buyer that:

3.1.1 Subject to the approval of the Bankruptcy Court, Seller has the capacity, and all requisite actions have been taken and approvals obtained by Seller, to fully authorize and empower Seller to execute this Agreement and consummate the transaction contemplated hereby.

3.1.2 Except (a) as disclosed in the MORs filed with the Bankruptcy Court, and (b) as disclosed by Seller to Buyer in writing, to the best of Seller’s knowledge, all payments for post-petition goods and services coming due in the ordinary course of the



business of MCSGlobal from and after the date of entry of the order of the Bankruptcy Court confirming the Trustee's appointment (including without limitation current payroll and other operating expenses, but excluding deferred compensation obligations, and fees and expenses of estate professionals) have been paid in the ordinary course of MCSGlobal's business. Without limiting the generality of the foregoing, from and after the date of entry of the order of the Bankruptcy Court confirming the Trustee's appointment, all insurance coverages in effect as of the Trustee's appointment have been maintained and the Seller has received no notice of cancellation in respect of any MCSGlobal insurance policy in effect as of that date.

3.1.3 The Trustee has received no notice of, nor is he otherwise aware of, any material uncured breach or default of Seller under any Customer Contracts (other than defaults occurring or arising from or in connection with the filing of Seller's bankruptcy case and/or compliance with bankruptcy laws, rules and court orders).

Any reference to knowledge of, or notice to, the Seller or the Trustee means actual, and not constructive, knowledge of, or notice to, the Trustee (and not merely to an employee or agent of MCSGlobal or the Trustee). Except for the foregoing, Seller makes no representations or warranties to Buyer.

3.2. Representations and Warranties of Buyer. Buyer represents and warrants that:

3.2.1. Authority. Buyer has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Buyer has been duly authorized by all necessary parties.

3.2.2. No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Buyer do not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Buyer by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture instrument or judgment to which Buyer is a party or which is or purports to be binding upon Buyer or which otherwise affects Buyer, which will not be discharged, assumed or released at Closing. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Buyer in accordance with its terms.

3.2.3. Financial Ability. Buyer has the financial resources to consummate the transaction contemplated hereby at Closing, is solvent, and has not made a general assignment for the benefit of its creditors or been adjudicated a bankrupt or insolvent, nor has a receiver, liquidator, or trustee of Buyer or any of Buyer's assets been appointed or a petition filed by or against Buyer for bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or any similar federal or state statute, or any proceeding instituted for the dissolution or liquidation of Buyer.

3.2.4 Purchase “As Is, Where Is”. Buyer acknowledges and agrees that Buyer is familiar with the Purchased Assets and has examined, or had the opportunity to examine, all matters concerning the Purchased Assets which Buyer deems material to the transaction contemplated by this Agreement, the condition of or title to the Purchased Assets, and operations and financial results of MCSGlobal.

Buyer further acknowledges and agrees that Buyer is acquiring the Purchased Assets in their “AS IS, WHERE IS” condition as of the Closing Date WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. Other than as expressly set forth in this Agreement, neither Seller nor MCSGlobal, nor any of their respective agents, officers, representatives, attorneys, financial professionals, or employees (collectively, “Seller Related Persons”) have made any representations or warranties, direct or indirect, oral or written, express or implied, to Buyer or any agents, representatives, attorneys, financial professionals or employees of Buyer (collectively, “Buyer Related Persons”) with respect to the condition of the Purchased Assets, the fitness of the Purchased Assets for any particular purpose, their compliance with any laws, or the operations or financial results of MCSGlobal, and Buyer is not aware of and does not rely upon any such representation either to itself or to any other person. Any information, documents, or materials which have been or hereafter are made available directly or indirectly to Buyer or any Buyer Related Person are made available solely as an accommodation to Buyer in the conduct of its due diligence, and neither Seller nor any Seller Related Person make any representation or warranty as to the accuracy or completeness thereof.

4. Conditions to Closing. The obligation to close on the sale of the Purchased Assets shall be contingent on the satisfaction of the following conditions:

4.1 Orders/Closing. The obligation of Seller and Buyer to consummate the transactions described herein shall be contingent upon (a) entry, on or before December 23, 2016, of an order by the Bankruptcy Court pursuant to sections 363(f) and 365 of the Bankruptcy Code (1) authorizing Seller to sell the Purchased Assets to Buyer free and clear of all liens, claims, and interests, (2) assuming and assigning the Customer Contracts to Buyer, in accordance with the terms, provisions, and conditions of this Agreement, and (3) prohibiting any person with notice of the motion for approval of this Agreement from asserting against Buyer any claim or cause of action that is property of the Seller (the “Sale Order”); (b) the Sale Order is not stayed in whole or in part by its terms, by operation of law, or by any subsequent order of the Bankruptcy Court or any other court of competent jurisdiction; and (c) occurrence of Closing on or before the Outside Closing Date (as defined below).

4.2 Additional Conditions to Obligations of Seller. The obligation of Seller to consummate the transactions described herein shall be contingent upon (a) the payment at Closing by Buyer of the Purchase Price set forth in Section 2.2 above (subject to the adjustments provided for in this Agreement); and (b) the execution and delivery by Buyer of the documents and instruments required of Buyer under this Agreement.

4.3 Additional Conditions to Obligations of Buyer. The obligation of Buyer to consummate the transactions described herein shall be contingent upon the execution and delivery by Seller of the documents and instruments required of Seller under this Agreement.

5. Operation of MCSGlobal. From and after the date hereof, pending the first to occur of termination of this Agreement or entry of the Sale Order, Seller shall exercise reasonable efforts to continue to operate MCSGlobal in the ordinary course consistent with past practices and in a normal and businesslike fashion. However, no action or inaction of Seller with respect to the operation of MCSGlobal from and after entry of the Sale Order shall under any circumstance constitute a basis for Buyer's termination of this Agreement or failure of any condition to Buyer's obligation to consummate this Agreement.

6. Closing.

6.1 Time of Closing. Except to the extent otherwise agreed to in writing by Buyer and Seller, the Closing shall take place on or before the fifth (5th) business day following the satisfaction of all conditions set forth in Section 4.1 of this Agreement (the "Closing Date"). Except to the extent otherwise agreed to in writing by Buyer and Seller, the Closing shall take place no later than December 31, 2016 (the "Outside Closing Date"). In the event that the Bankruptcy Court does not include in the Sale Order waivers of the stays under Bankruptcy Rules 6004(h) and 6006(d), the Outside Closing Date shall be extended to be the second business day following the expiration of such stays.

6.2 Seller Deliveries. At Closing, Seller shall deliver to Buyer the following:

6.2.1 A Bill of Sale (the "Bill of Sale") for the Purchased Assets, in such form as is acceptable to both Seller and Buyer, duly executed and acknowledged by Seller.

6.2.2 An Assumption and Assignment of Customer Contracts (the "Assignment") with respect to any Customer Contracts that are in effect as of Closing (current customers are identified in Exhibit A hereto), in a form reasonably acceptable to both Seller and Buyer, duly executed and acknowledged by Seller.

6.2.3 The Release (as defined below), duly executed and acknowledged by Seller.

6.3 Buyer Deliveries. At Closing, Buyer shall deliver to Seller the following:

6.3.1 Payment of the Purchase Price required under Section 2.2 hereof (subject to the adjustments provided for in this Agreement) by wire transfer, or such other means approved by Seller, to Seller or to such other person or persons as Seller shall designate in writing.

6.3.2 An Assumption with respect to the Assumed Liabilities, duly executed by Buyer.

6.3.3. The Assignment referred to in Section 6.2.2., duly executed by Buyer.

6.3.4 The Release, duly executed by Buyer and all affiliates of Buyer being released by Seller

6.3.5 All other instruments and documents reasonably requested by Seller to effectuate this Agreement and the transactions contemplated thereby.

7. Expenses. Except as expressly set forth in this Agreement, each party will pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby. Buyer, in addition to its other expenses, shall pay at Closing any and all tax liability (including, without limitation, applicable state sales tax and recording fees) arising out of or incurred in connection with the transactions contemplated by this Agreement.

8. Remedies.

8.1. Buyer Default. If all conditions precedent to Buyer's obligation to purchase the Purchased Assets have been satisfied, and Buyer breaches or fails to perform any term, covenant or provision of this Agreement or fails to complete the purchase of the Purchased Assets when and as required under this Agreement, including but not limited to any failure of the representations and/or warranties of Buyer hereunder to be true and correct both as of the date hereof and as of the Closing Date, then Seller shall, in his sole and absolute discretion, be entitled to exercise any and all rights and remedies which Seller may hold or be entitled to under this Agreement, at law, or in equity, including without limitation, forfeiture of the Deposit as partial liquidated damages (and not as a penalty, the parties hereto expressly acknowledging that damages in respect of such breach may be difficult or impossible to accurately ascertain), and/or a suit for damages and/or to compel Buyer to specifically perform this Agreement, in each case without prior notice to Buyer and without the necessity of any application to, or order of, the Bankruptcy Court.

8.2. Seller Default. If all conditions precedent to Seller's obligation to sell the Purchased Assets have been satisfied, and Seller breaches or fails to complete the sale of the Purchased Assets or, following ten (10) days written notice of default from Buyer, to perform its obligations under this Agreement, Buyer may, as its sole remedies therefor, elect to either (a) seek specific performance of this Agreement, or (b) terminate this Agreement and obtain a refund of the Deposit. Such election shall be made at the time Buyer first provides a notice of default, and shall not be changed thereafter without Seller's written consent. In no event shall Buyer be entitled to seek or obtain any damages or other remedies of any kind, including, without limitation, consequential, indirect or punitive damages from Seller or any Seller Related Person.

9. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by written notice to the other party) of the party for whom such notice or communication is intended:

If to Seller:

Bradford F. Englander, Trustee  
Whiteford Taylor & Preston, L.L.P.  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042

If to Buyer:

Daniel J. Sheridan  
Stark & Stark, a Professional Corporation  
993 Lenox Drive  
Lawrenceville, NJ 08648

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; or by overnight courier service. Any notice or communication sent by registered or certified mail shall be effective when the return receipt is executed or when delivery is refused. Any notice or communication by hand delivery or overnight courier service shall be effective when delivered to the applicable address(es) set forth above.

10. Releases. At Closing, Seller shall release Buyer, and Buyer shall release the Seller, to the extent provided, and substantially in the form set forth, in the form of release attached hereto as Exhibit B (the "Release"). For the avoidance of doubt, the released parties do not include (i) Suresh Doki or any member of his family or any affiliate of any of them, or (ii) Prolink Holdings or any person or entity affiliated with, or claiming by, through or under, Prolink Holdings.

11. Further Assurances. Buyer and Seller agree to act in good faith, and to properly and fully execute in a timely manner any and all documents and instruments necessary to carry out the terms and intent of this Agreement. Buyer and Seller shall also, at all times in the future, upon the request of the other, execute and deliver to the other all additional and further assurances of any name which may be necessary to fully consummate and carry out the terms and intent of this Agreement. However, nothing contained in this section shall require either party to assume any liability or expense not expressly required by the terms of this Agreement.

12. Miscellaneous Provisions.

12.1. Assignability. Buyer may assign or transfer all or any portion of its rights under this Agreement to any individual, entity or other person who is an affiliate of Buyer, provided that such person assumes all responsibilities and liabilities of Buyer under this Agreement.

12.2. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to conflicts of laws principles, and the applicable provisions of the Bankruptcy Code, and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and permitted assigns, including, if MCSGlobal's Chapter 11 case is converted to a case under Chapter 7 of the Bankruptcy Code, any Chapter 7 trustee.

12.3. Time of the Essence. Time is of the essence of this Agreement.

12.4. Headings. The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

12.5. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.6. Exhibits. All Exhibits referred to herein and which are attached hereto are expressly made and constitute a part of this Agreement.

12.7. Binding Effect. The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Buyer or Seller does not constitute an offer by Seller or Buyer to enter into an agreement to sell or purchase the Purchased Assets, and neither party shall be bound to the other with respect to any such purchase and sale until a definitive agreement satisfactory to the Buyer and Seller in their sole discretion is executed and delivered by both Seller and Buyer.

12.8. Entire Agreement: Amendments. This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied oral or written, except as contained herein. This Agreement may only be amended in a writing duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

12.9. Performance on Weekends and Holidays. Whenever any date fixed in this Agreement falls on a Saturday, Sunday, or federal holiday, then any action or occurrence required on or before that date must be taken or occur on or before the next succeeding business day.

12.10. Jurisdiction; Venue. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine any matter arising from or relating to the sale of the Purchased Assets and the enforcement of any rights and remedies of Seller or Buyer hereunder. Buyer hereby consents to such jurisdiction. The parties hereby consent to final determination of all disputes and matters arising under this Agreement by the Bankruptcy Court to the fullest extent permitted by law. If the Bankruptcy Court lacks jurisdiction then the parties hereby submit to the exclusive jurisdiction and venue of the United States District Court for the Eastern District of Virginia. If the United States District Court for the Eastern District of Virginia lacks jurisdiction, the parties hereby submit to the exclusive jurisdiction and venue of the Circuit Court for Fairfax County, Virginia.

12.11. **WAIVER OF JURY TRIAL.** THE PARTIES, TO THE FULL EXTENT

**PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT.**

12.12. Conflicts with Sale Order. In the event of any conflict or inconsistency between the provisions of this Agreement and the Sale Order, the provisions of the Sale Order shall govern and control.

12.13. Agreement Subject to Higher and Better Offers. Buyer and Seller acknowledge and agree that this Agreement is contingent upon submission to and the approval of the Bankruptcy Court; and that this Agreement is subject to higher and better offers as may be received prior to or at any hearing by the Bankruptcy Court to consider approval of this Agreement.


12.14. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by reason of the party being deemed to have drafted or dictated such provision. Each party acknowledges that it has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement in connection with its legal counsel, and that this Agreement shall be construed as jointly drafted by each party hereto. Unless otherwise defined, terms herein shall have the same meaning given such terms in Section 101 of the United States Bankruptcy Code.

12.15. Attorneys' Fees and Costs. In the event that any party is required to take any judicial action to enforce the terms of this Agreement, the prevailing party in any such action shall be entitled to have its reasonable attorneys' fees and costs paid by the other party.

[Signatures to Appear on Following Page]

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

SELLER:

  
\_\_\_\_\_  
Bradford F. Englander,  
Chapter 11 Trustee for  
MCSGlobal Incorporated

BUYER:

KELLTON TECH, INC.

By:   
\_\_\_\_\_  
Srinivas Potluri, Vice President



**Exhibit A**

**Assumed and Assigned Contracts**

<b>Customer</b>	<b>Employee Name</b>
Kforce Inc	Aggi R Devarapalli
Vdart	Ayyappa Masetti
K2 Partenering	Denny J Karackadu
RTP Technologies	Madhuri Pydimukkala
M.I.S.I	Mallikarjuna R Akkinpalli
eTeam	Naveen Velluri
Belcan Tech Services	Rajesh Arumugam
Eliassen Group	Satyakam Saranga
TekSystems	Fnu Shamimuddin
ThyssenKrupp	Srikanth Ramineni
Logic House	Swati Aneja
Diverse Technologies	Venkatarao Nelluri
Innocore Solutions, Inc.	Venugopal Kukkala
SupremeSoft Inc.	Haritha Aide

Exhibit B

### MUTUAL RELEASE

This Mutual Release is executed and delivered as of the \_\_\_\_ day of December, 2016, by and among BRADFORD F. ENGLANDER, ESQUIRE (the "Trustee"), in his capacity as Chapter 11 Trustee for MCSGlobal Incorporated ("MCSGlobal"), and KELLTON TECH SOLUTIONS, LTD., an India limited company ("KTSL"), KELLTON TECH, INC., a Delaware corporation ("KTI") KELLTON TECH SOLUTIONS, INC. ("KTSI"), a Delaware corporation, EVANTAGE SOLUTIONS, INC., a Delaware corporation ("ESI"), SUPREMESOFT GLOBAL, INC., a Delaware corporation ("SGI"), VIVOS PROFESSIONAL SERVICES, LLC, a New Jersey limited liability company ("VPS"), and all officers, directors, shareholders, members, managers and agents of any of them (KTSL, KTI, KTSI, ESI, SGI and VPS and their respective officers, directors, shareholders, members, managers and agents are sometimes hereinafter referred to collectively as the "Kellton Parties").

1. This Mutual Release is executed and delivered pursuant to that certain Asset Purchase and Sale Agreement dated as of November 23, 2016 (the "Agreement") by and between (1) the Trustee, and (2) Kellton Tech, Inc., a Delaware corporation (the "Buyer").
2. Except as expressly stated herein, the Trustee, on behalf of MCSGlobal and its bankruptcy estate, hereby releases, acquits and forever discharges the Kellton Parties from any and all liabilities, claims, suits, debts, liens, losses, causes of action, demands, rights, damages, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, liquidated or unliquidated, disputed or undisputed (collectively, "Claims"), that the Trustee and/or MCSGlobal may have or claim to have against any or all of the Kellton Parties arising out of any act, omission or circumstance arising or existing from the beginning of time through the date of this Agreement ("Trustee Released Claims").
3. Except as expressly stated herein, the KTSL, KTI, KTSI, ESI, SGI and VPS, on behalf of itself and its respective officers, directors, shareholders, members, managers and agents, hereby release, acquit and forever discharge the Trustee, MCSGlobal, MCSGlobal's bankruptcy estate, any successor chapter 11 or chapter 7 trustee, and all professionals engaged by the Trustee or any successor (the "Trustee Parties"), from any and all Claims, that the Kellton Parties or any of them, may have or claim to have against any or all of the Trustee Parties arising out of any act, omission or circumstance arising or existing from the beginning of time through the date of this Agreement ("Kellton Released Claims").
4. Notwithstanding the foregoing, nothing herein shall constitute or be construed as effectuating a release of: (a) any Claims or obligations arising under the Agreement; (b) Claims by or against Suresh Doki or Mahdavi Doki, or either of their respective insiders, family members, heirs, legatees, agents, representatives, successors and assigns and any affiliates of any of them, and any past, present or

former officers, directors or insiders of any of those affiliates; (c) Claims against current or former attorneys, advisors and/or counsel of MCSGlobal; or (d) Claims arising from and after the date of the Agreement.

5. The Trustee Released Claims and the Kellton Released Claims are referred to collectively as the “Released Claims.” The parties each hereby represent, warrant and covenant that none of them will sue, or otherwise prosecute in any way, any person or entity hereinabove released with respect to any of the Released Claims that are released and discharged under this Mutual Release. All parties hereby further represent, warrant and covenant that he or it has not assigned, sold, encumbered or otherwise transferred or disposed of any interest in any of the Released Claims.
6. This Mutual Release reflects the entire understanding of the parties with respect to the **subject matter herein contained and supersedes any prior agreements, whether written or oral, in regard thereto.**
7. The United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”) shall retain exclusive jurisdiction to hear and determine any matter arising from or relating to the sale of the Purchased Assets and the enforcement of any rights and remedies of the parties hereunder. The parties hereby consent to final determination of all disputes and matters arising under this Mutual Release by the Bankruptcy Court to the fullest extent permitted by law. If the Bankruptcy Court lacks jurisdiction then the parties hereby submit to the exclusive jurisdiction and venue of the United States District Court for the Eastern District of Virginia. If the United States District Court for the Eastern District of Virginia lacks jurisdiction, the parties hereby submit to the exclusive jurisdiction and venue of the Circuit Court for Fairfax County, Virginia.
8. No provision of this Mutual Release shall be construed against or interpreted to the disadvantage of any party by reason of the party being deemed to have drafted or dictated such provision. Each party acknowledges that it has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Mutual Release in connection with its legal counsel, and that this Mutual Release shall be construed as a jointly drafted by each party hereto. Unless otherwise defined, terms herein shall have the same meaning given such terms in Section 101 of the United States Bankruptcy Code.
9. In the event that any party is required to take any judicial action to enforce the terms of this Mutual Release, the prevailing party in any such action shall be entitled to have its reasonable attorneys' fees and costs paid by the other party.

[Signatures on Following Page]

TRUSTEE:

---

Bradford F. Englander,  
Chapter 11 Trustee for  
MCSGlobal Incorporated

KELLTON PARTIES:

KELLTON TECH SOLUTIONS LTD.

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

KELLTON TECH, INC.

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

KELLTON TECH SOLUTIONS, INC.

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

EVANTAGE SOLUTIONS, INC.

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

SUPREMESOFT GLOBAL, INC.

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

VIVOS PROFESSIONAL SERVICES,  
LLC

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

**Exhibit D**

**Summary of Transfers with Kellton Subsidiaries**

MCS Global Incorporated  
 Document Page 47 of 67  
 All Transactions with Kellton Entities

<u>Date</u>	<u>Party</u>	<u>Incoming</u>	<u>Outgoing</u>	<u>Bank</u>
10/8/2013	Kellton Tech Inc.		\$325,000.00	BofA
10/9/2013	Kellton Tech Inc.		\$4,000.00	BofA
11/4/2013	Kellton Tech Inc.	\$35,000.00		BofA
11/8/2013	Kellton Tech Inc.		\$15,000.00	BofA
12/2/2013	Supremesoft	\$3,555.19		Accounts Payable
12/26/2013	Kellton Tech Inc.		\$115,000.00	BofA
12/27/2013	Kellton Tech Inc.		\$41,666.67	BofA
1/27/2014	Kellton Tech Inc.		\$20,000.00	BofA
1/27/2014	Supremesoft	\$5,449.31		American Express
2/18/2014	Kellton Tech Inc.		\$56,000.00	BofA
3/7/2014	Supremesoft	\$3,555.19		
3/17/2014	Kellton Tech Inc.	\$15,000.00		BofA
4/7/2014	Kellton Tech Inc.		\$370,000.00	BofA
4/11/2014	Kellton Tech Inc.	\$10,000.00		BofA
4/15/2014	Kellton Tech Inc.	\$15,000.00		BofA
4/29/2014	Kellton Tech Inc.	\$7,000.00		BofA
5/1/2014	Kellton Tech Inc.		\$8,000.00	BofA
5/9/2014	Kellton Tech Inc.	\$24,000.00		BofA
5/12/2014	Kellton Tech Inc.		\$20,000.00	BofA
5/19/2014	Kellton Tech Inc.		\$10,000.00	BofA
5/23/2014	Kellton Tech Inc.		\$30,000.00	BofA
5/29/2014	Kellton Tech Inc.	\$40,000.00		BofA
5/29/2014	Kellton Tech Inc.		\$100,000.00	BofA
5/29/2014	Kellton Tech Inc.		\$100,000.00	BofA
6/5/2014	Supremesoft	\$1,726.60		Accounts Receivable
6/16/2014	Supremesoft		\$50,000.00	BofA
6/23/2014	Supremesoft		\$2,500.00	Accounts Payable
6/26/2014	Kellton Tech Inc.	\$235,200.00		BofA
6/30/2014	Supremesoft		\$6,996.00	BofA
7/1/2014	Supremesoft	\$3,555.19		Accounts Payable
7/1/2014	Supremesoft		\$2,500.00	Accounts Payable
7/8/2014	Supremesoft	\$50,000.00		BofA
7/8/2014	Supremesoft	\$25,000.00		Cardinal Bank
7/11/2014	Supremesoft		\$40,000.00	BofA
7/14/2014	Kellton Tech Inc.		\$10,000.00	BofA
7/17/2014	Kellton Tech Inc.	\$105,937.48		BofA
7/23/2014	Kellton Tech Inc.		\$85,000.00	Iglily Solutions
8/1/2014	Kellton Tech Inc.		\$12.67	
8/7/2014	Supremesoft	\$25,000.00		BofA
8/7/2014	Supremesoft	\$50,000.00		Cardinal Bank
8/13/2014	Supremesoft		\$65,000.00	BofA
8/28/2014	Supremesoft	\$20,000.00		Savoy
9/2/2014	Kellton Tech Inc.	\$8,020.00		BofA
9/8/2014	Supremesoft	\$90,000.00		Savoy
9/10/2014	Supremesoft		\$40,000.00	BofA

MCS Global Incorporated  
 Document Page 48 of 67  
**All Transactions with Kellton Entities**

<u>Date</u>	<u>Party</u>	<u>Incoming</u>	<u>Outgoing</u>	<u>Bank</u>
9/11/2014	Supremesoft		\$20,000.00	BofA
9/17/2014	Supremesoft		\$4,000.00	BofA
10/1/2014	Evantage	\$400,000.00		Savoy
10/3/2014	Evantage		\$400,000.00	PNC
10/10/2014	Supremesoft		\$10,000.00	Savoy
10/10/2014	Supremesoft	\$70,000.00		Savoy
10/14/2014	Supremesoft		\$14,000.00	Savoy
10/17/2014	Supremesoft		\$10,000.00	Savoy
10/20/2014	Evantage	\$30,000.00		Savoy
10/20/2014	Supremesoft	\$3,000.00		BofA
10/24/2014	Evantage		\$10,500.00	Savoy
10/29/2014	Supremesoft	\$42,000.00		Savoy
11/5/2014	Supremesoft		\$5,253.06	Savoy
11/7/2014	Supremesoft	\$22,000.00		BofA
11/10/2014	Supremesoft	\$2,224.00		Savoy
		\$1,342,222.96	\$1,990,428.40	



**Exhibit E**

**Summary of Itria Loans**

<u>Date</u>	<u>Party</u>	<u>Received</u>	<u>Payments Made</u>	<u>Type of Payment</u>	<u>Statement Notes</u>
4/2/2014	Itria	\$375,000.00			Loan from Itria
4/15/2014	Itria		\$8,557.40	Principal	
4/29/2014	Itria		\$8,650.50	Principal	
5/13/2014	Itria		\$8,745.50	Principal	
5/20/2014	Itria	\$125,000.00			Deposit
5/27/2014	Itria		\$8,841.10	Principal	
6/4/2014	Itria		\$4,302.70	Principal	
6/10/2014	Itria		\$8,937.70	Principal	
6/11/2014	Itria		\$4,372.40	Principal	
6/24/2014	Itria		\$9,035.40	Principal	
7/2/2014	Itria		\$4,443.20	Principal	
7/8/2014	Itria		\$9,134.20	Principal	
7/16/2014	Itria		\$4,515.20	Principal	
7/17/2014	Itria		\$105,937.48	Principal	Funds Transfer
7/22/2014	Itria		\$9,234.00	Principal	
8/5/2014	Itria		\$9,334.85	Principal	
8/19/2014	Itria		\$9,437.00	Principal	
9/2/2014	Itria		\$9,540.05	Principal	
9/16/2014	Itria		\$9,644.40	Principal	
9/30/2014	Itria		\$9,749.80	Principal	
		<b>\$500,000.00</b>	<b>\$242,412.88</b>		

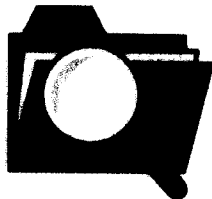
**Exhibit F**

**Summary of Savoy Bank Loan**

<u>Date</u>	<u>Party</u>	<u>Received</u>	<u>Payments Made</u>	<u>Purpose</u>	<u>Statement Notes</u>
5/23/2014	Savoy	\$100,000.00			Deposit
5/23/2014	Savoy	\$200,000.00			Funds Transfer
5/27/2014	Savoy	\$218,376.37			Funds Transfer
10/3/2014	Savoy	\$400,000.00			Funds Transfer
					Funds Transfer; credit line adv. From In.
10/3/2014	Savoy		\$400,000.00	Principal	#400032200
		<u>\$918,376.37</u>	<u>\$400,000.00</u>		

**Exhibit G**

**UCC Search Results**



## The Pettit Company Inc

A Public Records Research Company

www.pettitcompany.com

**Invoice #: 00084164**

**Date: 6/17/2016**

**Ship Via: Email**

**Page: 1**

**Our Ref: 201606171226**

**Ship To:**

**WHITEFORD TAYLOR & PRESTON -- Falls Church  
3190 Fairview Park, Suite 300  
Falls Church, VA 22042**

**Remit To:**

**12807 Rossmore Ct  
Midlothian VA 23114  
800-752-6158 FAX: 800-236-2859  
Fed Tax ID: 31-1815125**

**Ordered By: Rebekah Odom**

**Your Ref: MCSGlobal**

**REPORT**

**CHARGE**

**A UCC search, at the Virginia State Corporation Commission, against MCSGLOBAL  
INCORPORATED reveals 5 filings through 06/09/16. See the enclosed report and copies.**

**\$20.00**

**12 pages @ \$1.50**

**\$18.00**

**Terms:  
DUE UPON RECEIPT**

**Total Amount: \$38.00**

**Deposit \$0.00**

**Balance Due: \$38.00**

*Interest in the amount of 1.5% per month will be charged on balance more than 30 days old.*

*The responsibility for maintaining public records rests with the filing officer, and The Pettit Company, Inc. will accept no liability beyond the exercise of reasonable care and the amount of this invoice.*



**www.pettitcompany.com**

## Page 1 of 1

**Our Ref #: 201606171226**

[illegible]



**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**Office of the Clerk**

September 27, 2013

1309340312

CT LIEN SOLUTIONS  
PO BOX 29071  
GLENDALE, CA 91209

**RECEIPT**

RE: MCSGLOBAL INCORPORATED

DCN/FILE NO: 13-09-25-3945-2

Dear Customer:

This is your receipt for \$20.00 covering the fees for filing an original financing statement with this office.

The effective date of the filing is September 25, 2013 at 11:28 AM.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

Joel H. Peck  
Clerk of the Commission

FSACCEPT  
FSO  
CIS0369

P.O. Box 1197, Richmond, VA 23218-1197  
Tyler Building, First Floor, 1300 East Main Street, Richmond, VA 23219-3630  
Clerk's Office (804) 371-9733 or (866) 722-2551 (toll-free in Virginia) [www.scc.virginia.gov/clk](http://www.scc.virginia.gov/clk)  
Telecommunications Device for the Deaf-TDD/Voice: (804) 371-9206



# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone: (800) 331-3282 Fax: (818) 662-4141	
B. E-MAIL CONTACT AT FILER (optional) CLS-CTLS_Glendale_Customer_Service@wolterskluwer.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address) 711891 -  <div style="display: flex; justify-content: space-between;"> <div> CT Lien Solutions  P.O. Box 29071  Glendale, CA 91209-9071 </div> <div> 39974279   VAVA </div> </div>	

File with: State Corporation Commission, VA

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME MCSGLOBAL INCORPORATED				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 317 GEORGE STREET SUITE 205		CITY NEW BRUNSWICK	STATE NJ	POSTAL CODE 08901
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME MCSGLOBAL INCORPORATED				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS 8201 GREENSBORO DRIVE SUITE 300		CITY MCLEAN	STATE VA	POSTAL CODE 22102
			COUNTRY USA	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME ENTREPRENEUR GROWTH CAPITAL, LLC				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 505 Park Avenue, 6th Floor		CITY New York	STATE NY	POSTAL CODE 10022
			COUNTRY USA	

4. COLLATERAL: This financing statement covers the following collateral:

All of the assets of the Debtor, wherever located, now owned or hereinafter created or acquired, including, but not limited to: (a) Accounts, Chattel Paper (including Electronic and Tangible Chattel Paper), Commercial Tort Claims, Goods, Inventory, Equipment, General Intangibles, Instruments, Investment Property, Documents, Deposit Accounts, Letter of Credit Rights, Promissory Notes, Supporting Obligations, policies and certificates of insurance, and proceeds of insurance; (b) all books, Records, and all other evidences of the Debtor's business Records, including all cabinets, drawers, etc. that may hold same, computer records, lists, software programs, wherever located, all whether now existing or hereafter arising or acquired; and (c) all renewals, substitutions, replacements, additions, Accessions, and all Proceeds (including Cash and Non-cash Proceeds) of any and all of the foregoing. All capitalized terms in this description shall have the meanings ascribed to them under the Uniform Commercial Code.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

6b. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

39974279 MCSGLOBAL



1407651507

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**Office of the Clerk**

**eFile (01/11)**

July 22, 2014

CT Lien Solutions  
P.O. Box 29071  
Glendale, CA 91209

**RECEIPT**

**RE: MCSGLOBAL INCORPORATED**

**DCN/FILE NO: 14-07-22-5807-4**

**ORIGINAL DCN/FILE NO: 13-09-25-3945-2**

**Dear Customer:**

This is your receipt for \$20.00 covering the fees for filing a termination of statement with this office.

The effective date of the filing is July 22, 2014 at 02:20 PM.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

A handwritten signature in black ink that reads "Joel H. Peck". The signature is written in a cursive, flowing style.

Joel H. Peck  
Clerk of the Commission

**FSACCEPT  
FST  
CISECOM**

P.O. Box 1197, Richmond, VA 23218-1197  
Tyler Building, First Floor, 1300 East Main Street, Richmond, VA 23219-3630  
Clerk's Office (804) 371-9733 or (866) 722-2551 (toll-free in Virginia) [www.ecc.virginia.gov/clk](http://www.ecc.virginia.gov/clk)  
Telecommunications Device for the Deaf-TDD/Voice: (804) 371-9206

1407651507

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> <b>CT Lien Solutions (800) 331-3282</b>	
<b>B. E-MAIL CONTACT AT FILER (optional)</b>	
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  <b>CT Lien Solutions</b> <b>P.O. Box 29071</b> <b>Glendale, CA 91209</b>	

File Number 14-07-22-5807-4

File Date and Time July 22, 2014 at 02:20 PM.

Filed Virginia State Corporation Commission

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY****1a. INITIAL FINANCING STATEMENT FILE NUMBER****13092539452**

**1b.** ☐ This FINANCING STATEMENT AMENDMENT is to be filed [(for record) (or recorded) in the REAL ESTATE RECORDS  
Filer attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

**2.** ☒ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

**3.** ☐ **ASSIGNMENT** (full or partial) Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9  
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

**4.** ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

**5. ☐ PARTY INFORMATION CHANGE:**Check one of these two boxes**AND** Check one of these three boxes toThis Change affects ☐ Debtor or ☐ Secured Party of record
☐ CHANGE name and/or address Complete item 6a or 6b, and item 7a or 7b and item 7c ☐ ADD name Complete item 7a or 7b, and item 7c ☐ DELETE name Give record name to be deleted in item 6a or 6b
**6. CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a ORGANIZATION'S NAME			
OR	6b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

**7. CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name)

7a ORGANIZATION'S NAME			
OR	7b INDIVIDUAL'S SURNAME		
INDIVIDUAL'S FIRST PERSONAL NAME			
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX

7c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
--------------------	------	-------	-------------	---------

**8. ☐ COLLATERAL CHANGE:** Also check one of these four boxes ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral  
Indicate collateral

**9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)  
If this is an Amendment authorized by a **DEBTOR**, check here ☐ and provide name of authorizing Debtor

9a ORGANIZATION'S NAME <b>Entrepreneur Growth Capital, LLC</b>			
OR	9b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

**10. OPTIONAL FILER REFERENCE DATA:****VA-0-44190711**



1405651008

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

Office of the Clerk

eFile (01/11)

May 14, 2014

CT Lien Solutions  
P.O. Box 29071  
Glendale, CA 91209-9071

**RECEIPT**

RE: MCSGLOBAL INCORPORATED

DCN/FILE NO: 14-05-14-5662-5

Dear Customer:

This is your receipt for \$20.00 covering the fees for filing an original financing statement with this office.

The effective date of the filing is May 14, 2014 at 12:44 PM.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

Joel H. Peck  
Clerk of the Commission

FSACCEPT  
FSO  
CISECOM

1405651008

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> <b>CT Lien Solutions 800-331-3282</b>	
<b>B. E-MAIL CONTACT AT FILER (optional)</b>	
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  <b>CT Lien Solutions</b> <b>P.O. Box 29071</b>  <b>Glendale, CA 91209-9071</b>	

File Number 14-05-14-5662-5

File Date and Time May 14, 2014 at 12:44 PM.

Filed Virginia State Corporation Commission

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name), if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>MCSGLOBAL INCORPORATED</b>				
OR	1b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c MAILING ADDRESS <b>319 St. Georges St.</b>		CITY <b>New Brunswick</b>	STATE <b>NJ</b>	POSTAL CODE <b>08901</b>
			COUNTRY	

2. **DEBTOR'S NAME** Provide only one Debtor name (2a or 2b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name), if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME				
OR	2b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>SAVOY BANK</b>				
OR	3b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c MAILING ADDRESS <b>1675 Broadway</b>		CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10019</b>
				COUNTRY

4. **COLLATERAL:** This financing statement covers the following collateral

**All assets, personal property and fixtures of every kind and nature, whether now or hereafter existing or acquired and wherever located, and all proceeds and products thereof, including without limitation the following categories of assets as defined in the Uniform Commercial Code of the State of New York, as amended from time to time: all Goods (including Inventory, Equipment and any Accessions thereto), Instruments (including promissory notes), Documents, Accounts (including health-care insurance receivables), Chattel Paper (whether tangible or electronic), Deposit Accounts (and any and all monies, securities and other property of the Debtor, and the proceeds thereof now or hereafter held or received by or in transit to the Bank from or for the Debtor, whether for safekeeping, custody, pledge, transmission, collection or otherwise), Letter of Credit Rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other Investment Property, supporting obligations, any other contract rights or rights to the payment of money, insurance**

5. Check only if applicable and check only one box Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box

☐ Agricultural Lien ☐ Non-UCC Filing

7. **ALTERNATIVE DESIGNATION** (if applicable) ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. **OPTIONAL FILER REFERENCE DATA:**

**VA-0-43276480**

1405651008

**UCC FINANCING STATEMENT ADDENDUM****FOLLOW INSTRUCTIONS****9. NAME OF FIRST DEBTOR:** Same as line 1a or 1b on Financing Statement, if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a ORGANIZATION'S NAME

**MCSGLOBAL INCORPORATED**

OR 9b INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY****10. DEBTOR'S NAME** Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a ORGANIZATION'S NAME

OR 10b INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

**11.** ☐ **ADDITIONAL SECURED PARTY'S NAME** or ☐ **ASSIGNOR SECURED PARTY'S NAME:** Provide only one name (11a or 11b)

11a ORGANIZATION'S NAME

OR 11b INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

**12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)**

**claims and proceeds, tort claims, and all General Intangibles including, without limitation, all payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which the Debtor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of the Debtor, and all recorded data of any kind or nature, regardless of the medium of**

**13.** ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)**14. This FINANCING STATEMENT**☐ covers timber to be cut☐ covers as-extracted collateral☐ is filed as a fixture filing**15.** Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest)**16.** Description of real estate**17. MISCELLANEOUS:**

1405651008

## UCC FINANCING STATEMENT ADDENDUM

### FOLLOW INSTRUCTIONS

9. **NAME OF FIRST DEBTOR:** Same as line 1a or 1b on Financing Statement, if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a ORGANIZATION'S NAME

**MCSGLOBAL INCORPORATED**

OR 9b INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. **DEBTOR'S NAME** Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a ORGANIZATION'S NAME

OR 10b INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. ☐ **ADDITIONAL SECURED PARTY'S NAME** or ☐ **ASSIGNOR SECURED PARTY'S NAME:** Provide only one name (11a or 11b)

11a ORGANIZATION'S NAME

OR 11b INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

12. **ADDITIONAL SPACE FOR ITEM 4 (Collateral)**

**recording including, without limitation, all software, writings, plans, specifications and schematics, and all Proceeds and Products of the foregoing.**

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT

☐ covers timber to be cut

☐ covers as-extracted collateral

☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest)

16. Description of real estate

17. MISCELLANEOUS:



eFile (01/11)

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**Office of the Clerk**

**1405660454**

May 28, 2014

CT Lien Solutions  
P.O. Box 29071  
Glendale, CA 91209-9071

**RECEIPT**

RE: MCSGLOBAL INCORPORATED

DCN/FILE NO: 14-05-28-6263-9

ORIGINAL DCN/FILE NO: 14-05-14-5662-5

Dear Customer:

This is your receipt for \$20.00 covering the fees for filing an amendment to a financing statement with this office.

The effective date of the filing is May 28, 2014 at 03:52 PM.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

A handwritten signature in black ink that reads "Joel H. Peck".

Joel H. Peck  
Clerk of the Commission

FSACCEPT  
FSAM  
CISECOM

P.O. Box 1197, Richmond, VA 23218-1197  
Tyler Building, First Floor, 1300 East Main Street, Richmond, VA 23219-3630  
Clerk's Office (804) 371-9733 or (800) 722-2551 (toll-free in Virginia) [www.scc.virginia.gov/clk](http://www.scc.virginia.gov/clk)  
Telecommunications Device for the Deaf-TDD/Voice: (804) 371-9206



1405660454

## UCC FINANCING STATEMENT AMENDMENT

### FOLLOW INSTRUCTIONS

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> <b>CT Lien Solutions (800) 331-3282</b>	
<b>B. E-MAIL CONTACT AT FILER (optional)</b>	
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  <b>CT Lien Solutions</b> <b>P.O. Box 29071</b> <b>Glendale, CA 91209-9071</b>	

File Number 14-05-28-6263-9  
File Date and Time May 28, 2014 at 03:52 PM.  
Filed Virginia State Corporation Commission

### THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER  
**14051456625**

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS  
Filer attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ **ASSIGNMENT** (full or partial) Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9  
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

### 5. ☒ PARTY INFORMATION CHANGE:

Check one of these two boxes

AND Check one of these three boxes to

This Change affects ☒ Debtor or ☐ Secured Party of record

☒ CHANGE name and/or address Complete item 6a or 6b, and item 7a or 7b and item 7c ☐ ADD name Complete item 7a or 7b, and item 7c ☐ DELETE name Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a ORGANIZATION'S NAME <b>MCSGLOBAL INCORPORATED</b>				
OR	6b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name)

7a ORGANIZATION'S NAME <b>MCSGLOBAL INCORPORATED</b>				
OR	7b INDIVIDUAL'S SURNAME			
	INDIVIDUAL'S FIRST PERSONAL NAME			
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			
	SUFFIX			

7c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>317 St. Georges St.</b>	<b>New Brunswick</b>	<b>NJ</b>	<b>08901</b>	

8. ☐ **COLLATERAL CHANGE:** Also check one of these four boxes ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral  
Indicate collateral

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)  
If this is an Amendment authorized by a **DEBTOR**, check here ☐ and provide name of authorizing Debtor

9a ORGANIZATION'S NAME <b>SAVOY BANK</b>				
OR	9b INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME			
	ADDITIONAL NAME(S)/INITIAL(S)			
	SUFFIX			

10. **OPTIONAL FILER REFERENCE DATA:**  
**VA-0-43458545**

1405660658



eFile (01/11)

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**Office of the Clerk**

May 30, 2014

CT Lien Solutions  
P.O. Box 29071  
Glendale, CA 91209-9071

**RECEIPT**

RE: MCSGLOBAL INCORPORATED

DCN/FILE NO: 14-05-30-6526-2

ORIGINAL DCN/FILE NO: 14-05-14-5662-5

Dear Customer:

This is your receipt for \$20.00 covering the fees for filing an amendment to a financing statement with this office.

The effective date of the filing is May 30, 2014 at 06:38 PM.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

Joel H. Peck  
Clerk of the Commission

FSACCEPT  
FSAM  
CISECOM

P.O. Box 1197, Richmond, VA 23218-1197  
Tyler Building, First Floor, 1300 East Main Street, Richmond, VA 23219-3630  
Clerk's Office (804) 371-9733 or (866) 722-2551 (toll-free in Virginia) [www.scc.virginia.gov/clk](http://www.scc.virginia.gov/clk)  
Telecommunications Device for the Deaf-TDD/Voice: (804) 371-9206

1405660658

## UCC FINANCING STATEMENT AMENDMENT

### FOLLOW INSTRUCTIONS

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> <b>CT Lien Solutions (800) 331-3282</b>	
<b>B. E-MAIL CONTACT AT FILER (optional)</b>	
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  <b>CT Lien Solutions</b> <b>P.O. Box 29071</b> <b>Glendale, CA 91209-9071</b>	

File Number 14-05-30-6526-2  
File Date and Time May 30, 2014 at 06:38 PM.  
Filed Virginia State Corporation Commission

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1a. INITIAL FINANCING STATEMENT FILE NUMBER

**14051456625**

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS  
Filer attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ **ASSIGNMENT** (full or partial) Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9  
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☒ **PARTY INFORMATION CHANGE:**

Check one of these two boxes

**AND** Check one of these three boxes to

This Change affects ☒ Debtor or ☐ Secured Party of record

☒ **CHANGE** name and/or address Complete item 6a or 6b, and item 7a or 7b and item 7c ☐ **ADD** name Complete item 7a or 7b, and item 7c ☐ **DELETE** name Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a ORGANIZATION'S NAME <b>MCSGLOBAL INCORPORATED</b>				
OR	6b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name)

7a ORGANIZATION'S NAME <b>MCSGLOBAL INCORPORATED</b>				
OR	7b INDIVIDUAL'S SURNAME			
INDIVIDUAL'S FIRST PERSONAL NAME				
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)				
SUFFIX				

7c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>317 George Street</b>	<b>New Brunswick</b>	<b>NJ</b>	<b>08901</b>	

8. ☐ **COLLATERAL CHANGE:** Also check one of these four boxes ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral  
Indicate collateral

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)  
If this is an Amendment authorized by a **DEBTOR**, check here ☐ and provide name of authorizing Debtor

9a ORGANIZATION'S NAME <b>SAVOY BANK</b>				
OR	9b INDIVIDUAL'S SURNAME			
FIRST PERSONAL NAME				
ADDITIONAL NAME(S)/INITIAL(S)				
SUFFIX				

10. **OPTIONAL FILER REFERENCE DATA:**

**VA-0-43499917**