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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Case No. 16-11870-MKV
Chapter 11

METCOM NETWORK SERVICES, INC.,

Debtor.

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CHAPTER 11 DEBTOR IN POSSESSION’S MOTION FOR ORDER APPROVING DEBTOR’S PROPOSED SALE OF SUBSTANTIALLY ALL OF DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, AND DEBTOR’S PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASES AND AGREEMENTS, TO EPSILON US, INC. (“EPSILON”), IN ACCORDANCE WITH ASSET PURCHASE AGREEMENT (“APA”), AS WELL AS DEBTOR’S PROPOSED REJECTION OF SERVICE ORDERS AND AGREEMENTS, IN ACCORDANCE WITH APA, ON AN EXPEDITED BASIS, THROUGH (A) IMMEDIATE ISSUANCE, WITHOUT NOTICE OR HEARING, OF PROPOSED BIDDING PROCEDURES ORDER, APPROVING (i) BIDDING, AUCTION AND OBJECTION PROCEDURES FOR SALE, ASSUMPTION AND ASSIGNMENT, AND REJECTION, OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (ii) UP TO A \$150,000 EXPENSE REIMBURSEMENT TO EPSILON AS AN ADMINISTRATIVE EXPENSE IF ANY OTHER ENTITY MAKES HIGHER OR BETTER OFFER FOR ASSETS AND LEASES TO BE ASSUMED, (iii) SALE NOTICE, (iv) NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND CURE AMOUNTS, AND REJECTION OF CERTAIN AGREEMENTS, (v) FORM AND MANNER OF SERVICE OF NOTICES, (B) ISSUANCE OF ORDER TO SHOW CAUSE SCHEDULING EXPEDITED HEARING ON PROPOSED SALE, PROPOSED ASSUMPTION AND REJECTION AND PROPOSED AUCTION IF ANY OTHER ENTITY MAKES QUALIFIED BID IN TIME AND MANNER SET FORTH IN BIDDING PROCEDURES ORDER

TO: THE HONORABLE MARY KAY VYSKOCIL,
UNITED STATES BANKRUPTCY JUDGE:

Metcom Network Services, Inc., the chapter 11 debtor and debtor in possession herein (the “Debtor” or “Seller”), by and through its attorneys, Ackerman Fox, LLP, hereby moves this Court for the entry of an Order in the form of the proposed Order annexed hereto as **Exhibit E** (the “Sale and Assumption/Assignment Order”), approving the Debtor’s proposed sale (“Sale”), subject to higher or otherwise better offers, of substantially all of its assets (“Acquired Assets”¹) free and clear of liens, claims, or encumbrances of any kind or nature, and the Debtor’s proposed assumption and assignment (“Assumption and Assignment”) of multiple leases, executory contracts, and service orders² specified and listed in the Schedule of Assumed Agreements (“Assumed Agreements”) which is included in the Schedules annexed hereto as **Exhibit G** (“Schedules”) to Epsilon US, Inc., a Delaware corporation, or a Permitted Designee of Epsilon (“Epsilon” or “Buyer”), in accordance with the Debtor’s Asset Purchase Agreement with Epsilon, a copy of which (with all exhibits and schedules) is annexed hereto as **Exhibit F** (“APA”), with the purpose of operating the Debtor’s business after the Sale as a going concern business, and not for liquidation purposes, as well as approving the Debtor’s proposed rejection (“Rejection”) of one service order and one agreement specified and listed in the Schedule of Rejected Agreements which is included in the Schedules annexed hereto as **Exhibit G** in accordance with the APA (“Rejected Agreements”), on an expedited basis, through (a) the

¹ As reviewed below in the Motion, the Acquired Assets consist of substantially all of the Debtor’s assets and shall have the meaning set forth in Section 2(a) of the APA (as defined below). Acquired Assets do not include the Excluded Assets as referenced in Section 2(b) of the APA.

² The proposed Assumption and Assignment of multiple Assumed Agreements in this Motion is permitted under Federal Rule of Bankruptcy Procedure 6006(c), because it is being sought to one assignee.

Court's immediate issuance, without notice or hearing, of an Order substantially in the form of the proposed Order annexed hereto as **Exhibit B** (the "Bidding Procedures Order"), (i) approving bidding, auction ("Auction"), and objection procedures for the Sale, Assumption and Assignment, and Rejection, (ii) approving up to a \$150,000 expense reimbursement to Epsilon ("Expense Reimbursement") as an administrative expense in the Debtor's case, to be paid if any other entity makes a higher or better offer which is approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Assumed Agreements, (iii) approving a Sale Notice in the form annexed hereto as **Exhibit C** ("Sale Notice"), (iv) approving a Notice of the Debtor's Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and Cure Amounts, and the Debtor's proposed Rejection of the Rejected Agreements, in the form annexed hereto as **Exhibit D** ("Cure Notice"), (v) establishing and approving the form and manner of service of the Sale Notice and Cure Notice, and (b) the Court's issuance of an Order To Show Cause substantially in the form attached hereto as **Exhibit A**, scheduling an expedited hearing ("Hearing") on the Proposed Sale of the Acquired Assets and the Assumption and Assignment of the Agreements and Leases (the Acquired Assets and Assumed Agreements, when referred to hereinafter collectively, to be called the "Assets and Assumed Agreements"), and the proposed Rejection of the Rejected Agreements, together with such other and further relief as is necessary, just and proper, and in the best interests of the Debtor, creditors, and the Estate. In support of this Motion, the Debtor represents and sets forth as follows:

INTRODUCTION

1. The Debtor commenced its Chapter 11 case herein by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court on June 28, 2016 (the "Filing Date"), and has been under chapter 11 protection for more than seven months. During that time,

the Debtor has sought to stabilize its business and deal with ongoing issues and litigation. Because the Debtor's business is keyed to its location in a particular building, among the Debtor's most important assets are its real property leases - the most significant of these being the Debtor's lease at 60 Hudson St. in Manhattan (the "Building"). The Debtor entered this case owing back rent on its lease of space in the Building (the "60 Hudson Lease") of more than \$1.8 million dollars. Additionally, the 60 Hudson Lease expires by its terms in May 2017. This presented a challenge to the Debtor of finding a buyer that would be willing to purchase the Debtor's business as a going concern given the significant amount necessary to cure the 60 Hudson Lease and the limited amount of time remaining on that lease.

2. Additionally, until a recent settlement, the Debtor had been involved in ongoing litigation with N Plus Systems LLC ("N Plus") regarding N Plus's sublease of space in the Building from the Debtor. It is likely that any party wishing to buy the Debtor's business as a going concern would have required the resolution of the N Plus dispute prior to closing any such sale.

3. The Debtor was first approached by Epsilon about a potential sale transaction in September. In the intervening months, the Debtor and Epsilon have engaged in arms' length, good faith negotiations over the purchase transaction that the Debtor presents to the Court by way of this Motion. Pursuant to this proposed transaction, Epsilon is agreeing to pay (i) in excess of \$2 million in cure amounts, including the \$1.8 million due on the 60 Hudson Lease; (ii) in excess of \$1 million to resolve the secured claim of NFS Leasing, Inc. ("NFS") in relation to the Debtor's equipment lease and other property; and (iii) an additional \$600,000 to the Debtor's estate. Given that that the proposed sale will resolve the largest claims against the estate, the Debtor believes that the \$600,000 payment to the estate will be sufficient to provide a significant

dividend to unsecured creditors in this case, and, pending resolution of potential objections to claims, has the potential to provide a full recovery to creditors and claimants herein. As part of the proposed Sale, Epsilon is also proposing to offer employment to all but one of the Debtor's current employees.

4. The Sale transaction is not only the product of negotiations between the Debtor and Epsilon, it is also the product of negotiations between the Debtor, Epsilon, N Plus, NFS, and the Debtor's landlords. These negotiations, and the prospect of the Sale to Epsilon, were critical to the Debtor's ability to reach a successful settlement with N Plus. Negotiations with the landlords (on new or amended Leases) and with NFS (on a resolution of its claim) were part of finalizing the Sale transaction. The result is a Sale transaction that the Debtor anticipates will have the support of the Debtor's largest creditors, will provide a significant dividend to Debtor's unsecured creditors, will provide for the continued operation of the Debtor's business as an ongoing concern, and will allow for the continued employment of Debtor's employees.

5. Epsilon has also agreed to subject its transaction to higher and better offers through a bidding and auction process as outlined in the proposed Bidding Procedures Order.

6. Pursuant to this Motion, the Debtor requests that the Court enter the proposed Bidding Procedures Order, which approves the Bidding Procedures, the Expense Reimbursement, the notice procedures with respect to the Assumption and Assignment of the Assumed Agreements, the Auction and Sale Hearing Notice and schedules the Sale Hearing. Upon conclusion of the Auction and selection of the highest or otherwise best bid, the Debtor requests that the Court enter the proposed Sale and Assumption/Assignment Order, which authorizes the Sale to Epsilon, or alternatively, to the Successful Bidder at the Auction, free and

clear of liens, claims and encumbrances (other than with respect to Assumed Liabilities³) and the assumption and assignment of the Assumed Agreements.

7. Largely because of all the moving pieces involved, including negotiations with third parties like N Plus and the Debtor's landlords, it took the Debtor and Epsilon longer than anticipated to put the Sale in place. Accordingly, the Debtor is faced with a time crunch, as the deadline for the Debtor to assume or reject its real property leases, which are key components of the sale, is January 23. For this reason, the Debtor is asking for expedited treatment that will permit the Bidding Procedures Order to be entered without hearing and the Sale Hearing to be scheduled in the Order to Show Cause to occur prior to January 23.

8. The Debtor has disclosed its ongoing negotiations with Epsilon, and that its proposed Sale and Assumption and Assignment, was its exit strategy in this Chapter 11 Case, in all of the motions which it filed with this Court and served on the Office of the US Trustee, and creditors and parties in interest, since October 2016. The Debtor and/or the Debtor's counsel has discussed the status of the ongoing negotiations with the Office of the US Trustee, the attorneys for the landlords and/or the landlords, the attorneys for the secured creditor NFS, and N Plus. Further, as reviewed below, the Debtor is informed and believes that Epsilon has either reached agreements in principle, or is close to reaching agreements in principle, with N Plus, NFS and the 60 Hudson landlord that satisfy the closing conditions in the APA. Upon information and belief, all parties in interest are aware that this Motion requesting the Sale, subject to higher or better offers, is being submitted on an expedited basis.

³ "Assumed Liabilities" are described in Section 2(c) of the APA.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

10. Venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409.

11. The statutory and legal predicates for the relief requested herein are Sections 105(a), 363(b) & (f), 365(a) & (b), and 1146 of title 11 of the United States Code, 11 U.S.C. Section 101-et seq. (the “Bankruptcy Code”), Rules 1001, 2002, 6004, 6006, and 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), and Local Bankruptcy Rules (“LBR”) 6004-1, 6006-1, 9006-1, and 9077-1.

BACKGROUND

12. On June 28, 2016 (the “Filing Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court.

13. The Debtor is authorized to continue to operate and manage its business and property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

14. No trustee, examiner, or committee of creditors has been appointed in this case.

15. On July 12, 2016, the Debtor filed its Schedules of Assets and Liabilities and Statement of Financial Affairs, which were subsequently amended on September 1, 2016. (*See* ECF doc. nos. 19 and 27).

16. The meeting of creditors pursuant to Section 341 of the Bankruptcy Code was held on August 2, 2016, and closed.

17. On September 12, 2016, the Debtor filed an application and proposed Order seeking the establishment of a deadline requiring filing of proofs of claim on or before a date to be set by the Court, together with the proposed Notice thereof. (*See* doc. no. 29).

18. By Order dated September 16, 2016 (the “Bar Date Order”), October 26, 2016 was established as the last date for all creditors and other persons and entities other than governmental entities, and December 26, 2016 (the date that is one hundred eighty (180) days after the date of the order for relief) was fixed as the last date for governmental units to file proofs of claims herein. (*See* ECF doc. no. 32) (collectively, “Claims Bar Dates”).

19. The Debtor’s undersigned counsel served the notice of the Claims Bar Dates that were established in the Bar Date Order on all known creditors and parties in interest herein on September 19, 2016, and filed an affidavit of such service with the Court. (*See* ECF doc. no. 33).

A. Debtor’s Business

20. The Debtor is a New York corporation, incorporated under the laws of the State of New York, with its principal place of business at 60 Hudson Street, New York, New York, Suites 1001 and 2303.

21. The Debtor is owned 50% by Mark DuMoulin, Sr. and 50% by Susan Becker-DuMoulin.

22. The Debtor is in the business of telecommunications, building and local interconnection and engineering support, including the colocation of customer equipment. The Debtor acts as a primary provider of extremely high capacity fiber optic connections between domestic and international service providers that occupy space throughout the Building located at the Building.

23. A majority of the Debtor's customers are themselves large, key providers of internet and telephone services to the general public.

24. The Debtor's business is keyed to its location in a particular building, since fiber optic building interconnection between the floors is the Debtor's main business. At any moment in time, there are tens of thousands of telephone calls and data connections active in the circuits between the floors provided by the Debtor within the building. The Debtor has been building these connections and required relationships in the Building (and in other spaces that the Debtor occupies) one by one for over fourteen (14) years.

25. The Debtor has expended many years, all available resources and knowledge derived from intimately getting to know and support customer needs and to develop:

(a) systems and software that allow the Debtor to quickly market, sell, provide, install and maintain all the interconnection facilities between internet and phone providers; and

(b) web-based customer support systems, accessible by its existing customers, that are highly specific and unique to Building-based fiber-interconnection services, necessary for the operation of its business.

26. The Debtor leases five (5) different locations through which it operates its business (a) 60 Hudson Street, Suites 1001 and 2303, New York, NY 10013, (b) 75 Broad Street, New York, NY 10004, (c) 4250 Veterans Memorial Highway, Suite 3150 West, Holbrook, NY 11741, (d) 80 Washington Street, Poughkeepsie, NY 12601, and, (e) warehouse located at 190 Blydenburgh Road, Islandia, NY 11749 (collectively, the "Unexpired Real Property Leases").

27. Prior to the Filing Date, the Debtor entered into two (2) equipment leases in 2014 and 2015 with NFS, which also holds a properly perfected security interest on substantially all of the Debtor's Assets. The Debtor entered into a cash collateral stipulation with NFS which was approved during this Chapter 11 case, after notice and hearing, by this Court's Order dated November 1, 2016 (ECF Doc. No. 51).

**B. Proposed Sale and Assumption/Assignment
Transaction and Proposed Rejection of 2 Agreements⁴**

28. During the pendency of this chapter 11 case, the Debtor was approached by various entities, including Epsilon, inquiring about purchasing the Debtor's assets.

29. Epsilon Global Communications Pte Ltd ("EGC"), the parent of the Buyer, and the EGC Group, which consists of Epsilon Telecommunications subsidiaries of EGC located throughout the world, are one of the largest independent providers of connectivity solutions to the world's communications and cloud ecosystems. The EGC Group operates a network infrastructure that delivers mission critical, high performance applications and communications services to customers across the globe. It employs 150 staff over five offices worldwide. A brochure describing the EGC Group is annexed hereto as **Exhibit J**.

30. The Debtor determined that it would be in the best interests of the Debtor and its creditors to reorganize by selling substantially all of its Assets and assuming and assigning its Assumed Agreements (except for 2 agreements to be rejected), to Epsilon, with the purpose of Epsilon's operating the business after the Sale as a going concern business, and not for liquidation purposes.

31. After extensive negotiations between the Debtor and Epsilon, the Debtor entered into the APA with Epsilon⁵, agreeing to the Sale of substantially all of the Debtor's Acquired

⁴ Any summaries of terms of the APA or the Bidding Procedure Order that are contained in this Motion are qualified in their entirety by reference to the provisions of the APA and Bidding Procedures Orders themselves. In the event of any inconsistencies between the provisions of the APA and the Bidding Procedures Order and the descriptions in this Motion, the terms of the APA and Bidding Procedures Order will govern.

⁵ Epsilon is a Delaware corporation. As set forth in Section 6(e), on page 19, of the APA, Epsilon and its officers, directors, stockholders and agents are not creditors, stockholders, or Affiliates of the Seller, and are not insiders or Affiliates (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of any creditors of the Debtor or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the Debtor, subleasing space from the Debtor, or had any agreements (whether written or oral) with the Debtor or any of the Debtor's creditors as of the

Assets free and clear of liens to Epsilon or a Permitted Designee⁶, and the Debtor's proposed Assumption and Assignment of Assumed Agreements to Epsilon.

32. Pursuant to the APA, and assuming all closing conditions are met, Epsilon will pay approximately \$3.73 million to complete the Sale, which amount can be broken down as follows: (i) Cure Costs of approximately \$2.04 million (including the approximately \$1.8 million necessary to cure the 60 Hudson Lease); (ii) approximately \$1.09 million to NFS to resolve its alleged secured claim against the Debtor; and (iii) an additional \$600,000 to the Debtor's estate.⁷

33. Under Section 8(i) of the APA, the Debtor is required to cure any defaults under the Assumed Agreements (excluding the Cure Amounts to be paid by Buyer) on or prior to the Closing Date (which the Debtor anticipates will be relatively de minimus).

34. Epsilon has advised the Debtor that there is one service order and one agreement that it does not wish to assume, as identified on the Schedule of Rejected Agreements which is included in the Schedules annexed hereto as **Exhibit G**.

Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the Seller to obtain the Court's approval of the APA or to consummate the transactions contemplated by and under the APA.

⁶ Under Section 12(h), on page 30, of the APA, "[i]n no event shall a Permitted Designee be an insider or Affiliate (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of the [Debtor] or of any creditors of the [Debtor], or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the [Debtor], subleasing space from the [Debtor], or had any agreements (whether written or oral) with the [Debtor] or any of the [Debtor's] creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the [Debtor] to the Court's approval of this Agreement or to consummate the transactions contemplated by and under this Agreement.

⁷ Epsilon has advised the Debtor that it is in advanced discussions with the landlords for the Unexpired Real Property Leases with 60 Hudson Management Co. and 75 Broad LLC, and that it expects to be able to satisfy the closing conditions with them under either new or amended leases shortly. Epsilon has further advised the Debtor that it has reached an agreement with NFS for the buyout of its lease and Security Interest.

35. As set forth above, NFS is leasing property to the Debtor and it also holds a security interest in the Acquired Assets. Under Section 10(a)(xiv) of the APA, it is a condition to closing that “NFS shall have executed and delivered an agreement to terminate the equipment lease agreement between Seller and NFS, [and terminations of its] UCC financing statements, and any other security interest in the Acquired Assets, in form and substance acceptable to” Epsilon, and under Section 10(b)(iv) of the APA, it is a condition to closing that Epsilon is to deliver to NFS such amount as is required “pursuant to that termination of equipment lease agreement referenced in Section 10(a)(xiv) hereof such that any Lien of NFS on any Acquired Asset shall be released as of Closing”.

36. Epsilon is delivering a deposit in the amount of \$131,000 (the “Security Deposit”) within two (2) Business Days following the entry by this Court of the Bidding Procedures Order, by wire transfer or by a certified or cashier’s check, to the Debtor’s undersigned counsel, Ackerman Fox, LLP, to hold in a non-interest bearing account, as escrow agent (the “Escrow Agent”), under the terms of an Escrow Agreement between the parties, of which a copy is annexed hereto as **Exhibit I**, to be applied against the Purchase Price if Epsilon is the Successful Bidder. The Security Deposit is to be returned if Epsilon is not the Successful Bidder, under the terms of Section 10(b) and 10(a)(iii) of the APA. If the APA is terminated by the Debtor due to any material breach by Epsilon of any of its agreements, representations or warranties contained in the APA, Epsilon shall forfeit the Security Deposit, and the Security Deposit shall become property of the Debtor, Epsilon shall not be entitled to the Expense Reimbursement, and Epsilon’s administrative claim for the Expense Reimbursement shall automatically be deemed to be expunged in its entirety, under Section 10(b) and (10(a)(v) of the APA.

37. The Acquired Assets, as defined in Section 2(a) of the APA, include without limitation:

- i) All Customers and Customer deposits and advance payments;
- ii) All fiber optic capacity owned by Seller, all telecommunications and computer equipment, and all furniture, furnishings, automobiles, tools, parts and similar property;
- iii) All Inventories of Seller;
- iv) All equipment owned or leased by Seller, subject to the Lien of NFS Leasing, Inc. (“*NFS*”), including, without limitation, as set forth on the **Schedule of Equipment**;
- v) The Assumed Agreements, to the extent the same are assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, and all rights thereunder for and pertaining to all periods from and after the Effective Time, including any right (A) to receive payment for products sold or services rendered from and after any such Assumed Agreement’s assumption by Buyer; and (B) to assert Claims and take other rightful actions in respect of breaches, defaults and other violations of such contracts, arrangements, licenses, leases and other agreements to the extent such violations occur from and after the time at which any such Assumed Agreement is actually assumed by Buyer;
- vi) All Intellectual Property used by Seller in connection with the Business, together with all related income, royalties, damages and payments due or payable at the Closing or thereafter (including, without limitation, damages and payments for past or future infringements or misappropriations thereof), the right to sue and recover for past infringements or misappropriations thereof, any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property; and except to the extent that it is employed solely in connection with Excluded Assets, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against infringement thereto and rights to protection of interest therein under the laws of all jurisdictions, including any Intellectual Property arising after the date hereof;
- vii) Originals or copies of all books, records, manuals and other materials (in any form or medium) relating to or used in the Business, or with regard to the Acquired Assets, Assumed Liabilities, Assumed Agreements and Transferred Employees (subject to any necessary consents of such Transferred Employees) (collectively, “***Books and Records***”), including any computerized data bases and files and programs and associated software and including advertising matter, catalogues, price lists, correspondence, mailing lists, Customer lists, supplier lists, vendor lists, distribution lists, photographs, production data, sales and promotional materials and records,

- purchasing materials and records, operating records, Tax records, manufacturing and quality control records and procedures, blueprints, research and development files and records, data books, Intellectual Property disclosures, media materials and plates, accounting records, sales order files and litigation files, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of Seller including books of account, all Customer telephone numbers, addresses and other contact information, lock box account numbers, billing records and other Customer correspondence relating to the Business, all regulatory filings and other Books and Records relating to the rates and services provided by Seller in connection with the operation of the Business;
- viii) All manufacturer warranties and similar rights in favor of Seller with respect to any Acquired Asset;
- ix) All accounts (except as set forth in Section 2(b) of the APA), Accounts Receivable (except as set forth in Section 2(b)(iii) of the APA), notes and notes receivable which are payable to Seller or its Affiliates and relate to the Business; all guaranties and security therefor, and all goods and services giving rise thereto and the rights pertaining to such goods and services and all related insurance and insurance proceeds with respect thereto and all security deposits and prepayments, prepaid expenses, deposits and advances related to the Business, whether or not reflected on Seller's Books and Records;
- x) To the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, all confidentiality, noncompete or nondisclosure agreements executed by vendors, suppliers or employees of Seller or other third parties, in each case, relating to the Business;
- xi) To the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the insurance providers, all insurance policies of Seller or their Affiliates and any proceeds received thereunder that relate to the Business;
- xii) Except as set forth on the Schedule of Excluded Claims and Rights and subject to Section 2(b)(iv) of the APA, all of the rights, Claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment of Seller against a third party and relating to the Acquired Assets, the Business and the Assumed Liabilities arising out of transactions occurring prior to the Closing Date, except where such rights, Claims or causes of action relate to Excluded Assets or Excluded Liabilities; to the extent such rights, Claims or causes of action relate to both Assumed Liabilities and Excluded Liabilities, Buyer and Seller shall share such rights, Claims or causes of action in the same proportion as their respective Liabilities bear to the total liability relating to those rights, Claims or causes of action; and
- xiii) All Customer lockbox accounts.

38. The following assets of the Debtor are excluded from the Sale (“Excluded Assets”), and are to be retained by the Debtor’s Estate, as listed in Section 2(b) of the APA:

(i) All cash and cash equivalents (expressly including all monies in Seller’s possession or in any of Seller’s bank accounts as of the Closing Date), all bank, custody and investment accounts, and CDs (other than accounts described in Section 2(a)(ix) and Section 2(a)(xii)), and all marketable securities;

(ii) All deposits, withholdings, prepayments, credits and refunds of Seller or its Affiliates not related to the Business;

(iii) All Accounts Receivables for services, space, facilities or otherwise that were billed or invoiced by Seller on or prior to January 2, 2017 but were not yet paid by third parties to Seller as of Closing;

(iv) All Claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment (x) relating to the Excluded Assets, or (y) that have accrued, arisen or been asserted against any Person or that relate to any period before the Effective Time, in each case which do not relate primarily to the Acquired Assets (including fiduciary duty claims, tort claims and Claims against current and former employees of Seller that accrued prior to Closing), all rights and powers of a trustee and debtor-in-possession against any Person whatsoever, including all avoidance powers granted to Seller under the Bankruptcy Code and all causes of action and remedies granted pursuant to Sections 502, 510, 541, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

(v) All rights of Seller and its Affiliates in, to and under any Rejected Agreements;

(vi) All capital stock or other equity interest of Seller;

(vii) The certificates or articles of incorporation and certificates or articles of formation, qualifications to conduct business as a foreign entity, taxpayer and other identification numbers, seals, minute books, stock/interest transfer books, blank stock certificates, and other corporate or company documents and records relating to the organization or maintenance of the corporate or company existence of Seller;

(viii) All assets held by or for the account of Seller or its Affiliates or employees pursuant to the terms of any deferred compensation, incentive compensation, welfare or other employee benefit plan, or the assets of any related trust described in Section 401 of the Code;

(ix) All rights that accrue to Seller under this Agreement;

(x) Any Governmental Permit or similar right that by its terms or applicable Law is not transferable to Buyer;

(xi) Rights to any Tax refunds of Seller, whether such refund is received as a payment or as a credit against future Taxes;

(xii) Any bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, workmen's compensation or other insurance, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, or whether for the benefit of a single individual or more than one individual including, but not limited to, any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended; and

(xiii) All rights and claims of Seller against N Plus Systems, LLC ("N Plus"), with respect to rent, power charges, electricity charges, and any other or further monies, costs or charges due to be paid to Seller including but not limited to for services, such as but not limited to Engineering, Installation, Troubleshooting, Environmental Service or any other Labor, Item or request of service from and including January 1, 2017 through the date that N Plus vacates the Premises, in good funds, under par. 4 of a certain Stipulation between N Plus and the Debtor which was approved by Order of the Bankruptcy Court; provided, however, that any rights and claims against N Plus or any of N Plus's principals, owners, agents, employees, attorneys or other professionals arising out of any agreement between Buyer and N Plus, including the assignment of that certain Colocation Agreement as set forth in Section 10(a) hereof, shall remain property of Buyer.

39. Section 9(a)(i), on page 24, of the APA provides that Epsilon is, subject to this Court's approval, to be granted an Expense Reimbursement of its out-of-pocket expenses not to exceed \$150,000, as an administrative priority in the Debtor's case under Bankruptcy Code Sections 503(b) and 507(a), which administrative priority claim shall automatically be deemed to be expunged, and shall not be paid or due to be paid from the \$600,000 Cash Purchase Price, or from any monies received by the Debtor of or from the sale, unless the Court directs or otherwise orders that the sale should be made by the Debtor to another higher or better offer made by a Qualified Bidder (as that term is defined in the APA and in the proposed Bidding Procedures Order) and Epsilon is not the successful bidder herein.

40. As set forth in Section 9(b) of the APA, the Debtor's negotiation of the APA with Buyer was and is critical to obtaining the highest and best price for the Acquired Assets, and

without Buyer's commitment of substantial time and expense to the process, the Debtor would have to employ a less orderly process for the sale of its assets and therefore risk attracting lower prices. The Debtor acknowledges that Epsilon would not have invested the time and incurred the expense of negotiating and documenting the transaction if it were not entitled to the Expense Reimbursement.

41. The APA also set forth at Section 7(a), that Epsilon shall either (a) extend offers of employment (contingent upon the Closing) to the Debtor's Employees listed on Schedule 7(a) which is included in the Schedules annexed hereto as **Exhibit G** (employees who accept such offers of employment from Buyer are referred to in the APA as "Transferred Employees") on terms and conditions, which offers shall provide for compensation and benefits substantially similar to the compensation and benefits provided by the Debtor to such employee (as listed on Schedule A which is included in the Schedules annexed hereto as **Exhibit G**), or (ii) agree to assume the Debtor's agreement with TriNet HR Corporation dated February 25, 2016. (Prior to the Filing Date, effective April 1, 2016, Metcom entered into an agreement with Trinet to save money, under which all of the Debtor's employees technically became employees of Trinet; Trinet deducts the monies to pay "its" "Metcom" employees from the Debtor's DIP operating account, and pays the withholding and matching funds taxes that are due under Trinet's own tax id number.)

42. There are numerous conditions precedent to the Closing of the Sale, set forth in Section 10 of the Agreement. These include, but are not limited to, in Section 10(a):

- (i) The representations and warranties of the Debtor set forth in Section 5 of the APA shall be true and correct in all material respects at and as of the Closing Date, and the representations and warranties of Epsilon set forth in Section 6 of the APA shall be true and correct in all material respects at and as of the Closing Date;

(ii) The Court shall enter a Sale Order, in all respects in a form reasonably acceptable to counsel for Buyer, has been entered by the Bankruptcy Court and shall have become a Final Order, unless the Sale Order expressly authorizes the sale and assignments before the expiration of 14 days after entry of the order under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d). (A form of the proposed Sale and Assumption/Assignment Order is annexed hereto as **Exhibit E**, and expressly includes a decretal paragraph waiving the 14-day waiting period under said Rules.)

(xi) The Debtor and [landlord 60] Hudson Owners, LLC (“Hudson”) shall have executed and delivered a release of all claims against the other, such release to be in form and substance satisfactory to Buyer;

(xii) Hudson shall have executed and delivered to Buyer an amendment to the lease agreement between Seller and Hudson, which amendment shall provide for lease terms acceptable to Buyer, with such amendment to become effective upon Buyer’s assumption of the lease;

(xiii) [Epsilon] and N Plus shall have entered into an agreement whereby [Buyer shall purchase, and N Plus shall assign to Buyer, all of N Plus’s rights under that certain Colocation Agreement by and between N Plus and Deutsche Telekom North America Inc. which Colocation Agreement will then be terminated and replaced by a new Colocation Agreement between the Buyer and Deutsche Telekom North America;

(xiv) NFS shall have executed and delivered an agreement to terminate the equipment lease agreement between Seller and NFS, any UCC financing statements, and any other security interest in the Acquired Assets, in form and substance acceptable to Buyer.

43. The Debtor is informed and believes that Epsilon has either reached agreements in principle, or is close to reaching agreements in principle, with N Plus, NFS and the 60 Hudson landlord that satisfy the closing conditions in the APA.

44. Another condition precedent is that under Section 10(b)(viii) of the APA, Epsilon is to offer employment agreements to Mark DuMoulin, Susan DuMoulin, Mark DuMoulin II, and Michael DuMoulin, in the forms annexed hereto as **Exhibit H**. See also Section 10(a)(x) of the APA. In order to induce Mark DuMoulin and Susan DuMoulin to continue to work for Buyer after the Closing, the employment agreements for Mark DuMoulin and Susan DuMoulin

provide for bonuses in the amount of \$250,000 each, which they can earn provided that there is a successful transition of the business to Epsilon and that the business meets certain “Key Performance Indicators” as of the one year anniversary of the closing of the sale, as outlined on “Exhibit A” to their employment agreements.

RELIEF REQUESTED

45. By this Motion, the Debtor requests this Court to issue the Sale and Assumption/Assignment Order in the form of the proposed Order annexed hereto as **Exhibit E**, under 11 U.S.C. Sections 105, 363(f), 365 and 1146, approving the Debtor’s proposed Sale, subject to higher or otherwise better offers, of substantially all of its Acquired Assets free and clear of liens, claims, or encumbrances of any kind or nature and the Debtor’s proposed Assumption and Assignment of the Assumed Agreements specified and listed in the Schedule of Assumed Agreements which is included in the Schedules annexed hereto as **Exhibit G** to Epsilon or its Permitted Designee, in accordance with the APA, with the purpose of operating the Debtor’s business after the Sale as a going concern business, and not for liquidation purposes, as well as approving the Debtor’s proposed Rejection of one service order and one agreement specified and listed in the Schedule of Rejected Agreements which is included in the Schedules annexed hereto as **Exhibit G** in accordance with the APA.

46. The Debtor’s last date to assume or reject its Unexpired Real Property Leases has recently been extended by Order of this Court under 11 U.S.C. Section 365(d)(4)(A) for a period of 90 days following the 120th day after the Filing Date, through and including January 23, 2017.

47. Under 11 U.S.C. Section 365(d)(4)(B), “[i]f the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.”

48. Epsilon has made it clear that the Assumption and Assignment of the Unexpired Real Property Leases, along with the other Assumed Agreements, is key and essential to its offer under the APA.

49. Further, as reviewed below, the Debtor respectfully submits its sale of the Acquired Assets to Epsilon, subject to higher or better offers, under the APA, in conjunction with its Assumption and Assignment of the Assumed Agreements, is the best course of action for the Debtor herein. The Debtor believes that the Sale will garner the highest and/or best offer available for the Acquired Assets. Further, without the sale, not only will the Debtor be incapable of reorganizing, but also, there will be no funds available for distribution to the Debtor's unsecured creditors. Accomplishing a prompt, orderly liquidation of the Acquired Assets through a Section 363 Sale will ensure that the value of the Acquired Assets are maximized, and that the Debtor will be able to pay a sizable (and depending on the amount of claims that are ultimately allowed, perhaps even a 100% distribution) to its nonlandlord unsecured creditors.

50. The Debtor, therefore, seeks this Court's approval of the Sale, and Assumption and Assignment, on an expedited basis before January 23, 2017, so that the Unexpired Real Property Leases can be assumed and assigned at a closing of the Sale to occur on or before January 23, 2017.

51. The Debtor seeks to accomplish this, within the time parameters set forth in Bankruptcy Rules 2002(a)(2), 6004, and 6006 and 9006, and LBR 6004-1, 6006-1, 9006-1, and 9077-1, through this Court's immediate issuance of two other separate Orders which are requested in this Motion: (a) a Bidding Procedures Order substantially in the form of the

proposed Order annexed hereto as **Exhibit B**, without notice or hearing⁸, (i) approving bidding, auction, and objection procedures for the Sale, Assumption and Assignment, and Rejection, (ii) approving up to a \$150,000 expense reimbursement to Epsilon (“Expense Reimbursement”) as an administrative expense in the Debtor’s case, to be paid if any other entity makes a higher or better offer which is approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Assumed Agreements, (iii) approving a Sale Notice in the form annexed hereto as **Exhibit C** (“Sale Notice”), (iv) approving a Notice of the Debtor’s Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and Cure Amounts, and Rejection of Rejected Agreements, in the form annexed hereto as **Exhibit D** (“Cure Notice”), (v) establishing and approving the form and manner of service of the Sale Notice and Cure Notice, and (b) the Court’s issuance of an Order To Show Cause substantially in the form annexed hereto as **Exhibit A**, scheduling an expedited Hearing on the Proposed Sale of the Acquired Assets, the Assumption and Assignment of the Agreements and Leases, and the Rejection, and the Auction, to be held before January 23, 2017.

A. **Request for Issuance of Sale and Assumption/Assignment Order, Approving Debtor’s proposed Sale of Acquired Assets, proposed Assumption and Assignment of Assumed Agreements and proposed Rejection of 2 Rejected Agreements**

52. The Debtor respectfully submits that ample authority exists for the approval of the proposed Sale of the Acquired Assets, proposed Assumption and Assignment of Assumed Agreements, and proposed Rejection of 2 Agreements, under Bankruptcy Code Sections 363, 365 and 1146.

Sale: Section 363

⁸ There is no independent requirement in the Bankruptcy Code, the Bankruptcy Rules or the LBR for notice or a hearing for Bidding Procedures to be established.

53. Section 363 of the Bankruptcy Code provides, in pertinent part, as follows:

(b)(1) The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if:

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) 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;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

Section 363(b)

54. Although section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, courts in the Second Circuit and other Circuits, in applying this section, have required that it be based upon the sound business judgment of the debtor. See, e.g., In re Chrysler, 405 B.R. 84 (Bankr. S.D.N.Y. 2009) (“If . . . [a] transaction has ‘a proper business justification’ which has potential to lead toward confirmation of a plan and is not to evade the plan confirmation process, the transaction may be authorize.... A debtor may sell substantially all of its assets...and later submit a plan of liquidation providing for the distribution of the proceeds of the sale.”); In re Chateaugay Corp., 973 F.2d 141 (2d Cir. 1992) (holding that a judge determining a §363(b) application must find from the evidence presented a good business reason to grant such application); The Committee of Equity Security Holders v. The Lionel Corp. (In re The Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (sale of Chapter 11 debtor's 82% interest in their subsidiary would have been permissible if the debtor-in-possession could have demonstrated a “business justification” or “a good business reason”); In re Ionosphere Clubs, Inc., 100 B.R. 670, 674-77 (Bankr. S.D.N.Y. 1989) (approving sale of Eastern Airline's shuttle operations, the debtor's principal operating assets).

55. The Debtor respectfully submits that it has a sound business justification for believing that its sale of the Acquired Assets to Epsilon under the APA, in conjunction with its Assumption and Assignment of the Assumed Agreements, is the best course of action for the Debtor herein. The Debtor believes that the Sale will garner the highest and/or best offer available for the Acquired Assets. Further, without the sale, not only will the Debtor be incapable of reorganizing, but also, there will be no funds available for distribution to the Debtor's unsecured creditors. Accomplishing a prompt, orderly liquidation of the Acquired

Assets through a Section 363 Sale will ensure that the value of the Acquired Assets is maximized, and that the Debtor will be able to pay a sizable (and depending on the amount of claims that are ultimately allowed, perhaps even a 100% distribution) to its unsecured creditors. A sale to Epsilon will also resolve the claims of the Debtors' landlords (which will be cured) and NFS (which Epsilon will pay to terminate the lease and security interest) - thereby resolving \$3 million in claims against the estate.

56. Accordingly, the Debtor submits that the transaction contemplated hereby represents a sound and reasonable exercise of its business judgment.

Section 363(f)

1. The Debtor requests this Court to authorize its Sale of the Acquired Assets under Section 363(f), free and clear of liens, encumbrances, and any interest in such property of an entity other than the estate.

2. The Debtor only has 2 secured creditors, to its knowledge: NFS and JPMorgan Chase Bank, N.A. ("JPMorgan").

3. As set forth above, NFS is leasing property to the Debtor and it also holds a security interest in the Acquired Assets. Under Section 10(a)(xiv) of the APA, it is a condition to closing that "NFS shall have executed and delivered an agreement to terminate the equipment lease agreement between Seller and NFS, [and terminations of its] UCC financing statements, and any other security interest in the Acquired Assets, in form and substance acceptable to" Epsilon, and under Section 10(b)(iv) of the APA, it is a condition to closing that Epsilon is to deliver to NFS such amount as is required "pursuant to that termination of equipment lease agreement referenced in Section 10(a)(xiv) hereof such that any Lien of NFS on any Acquired Asset shall be released as of Closing".

57. Therefore, NFS shall be paid in full through by Epsilon in connection with the termination of its lease such that the underlying equipment can be transferred to Epsilon free and clear of any claims by NFS, and free and clear of its security interest on the Debtor's property.

58. JPMorgan holds a security interest in a CD which is in its possession, which contains a little more than the amount due to it under a line of credit. JPMorgan Chase and the Debtor had discussions about this Secured Claim, and were about to enter into a stipulation, but when JPMorgan found out that it had to file a motion for the approval of this Stipulation and appear at a hearing regardless, it determined to proceed by way of motion to lift stay (ECF Doc. No. 62), which is scheduled for hearing on January 12, 2017 at 10:00 am. The proposed Order which JPMorgan submitted with its Motion (ECF Doc 62-6) contains all the terms agreed to with the Debtor, most notably that JPMorgan "shall liquidate [the CD] and apply to its Claim in this proceeding in full settlement and satisfaction of its Claim against the Bankruptcy Estate; and [JPMorgan] shall pay and remit to the Debtor any excess funds after liquidation of the [CD] and payment of its Claim, if any, within 10 days after liquidation of the [CD] ...[and] that upon application of the [CD] to the Claim, the Claim of [JPMorgan] shall be satisfied and the Proof of Claim [that JPMorgan] filed on October 26, 2016 (ECF Claim No. 15) shall be expunged...".

59. Therefore, the Debtor anticipates that it will establish at the Sale Hearing that it can satisfy the requirements of Section 363(f)(2) & (5) as to both of the Secured Claims on the Acquired Assets.

60. It is therefore respectfully requested that the Court authorize the Debtor to conclude the Sale of the Acquired Assets free and clear of any and all liens, claims and encumbrances.

Sections 363(m) and (n)

61. The Debtor further respectfully requests that the Sale and Assignment/Assignment Order (a) include the protections to Epsilon that are afforded to “good faith” purchasers under §363(m) of the Bankruptcy Code, and that (b) the Sale and Assumption and Assignment not be subject to avoidance under § 363(n) of the Bankruptcy Code.

62. While the Bankruptcy Code does not define “good faith” as required under Section 363(m), the Second Circuit has held that:

[g]ood faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings . . . A purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or any attempt to take grossly unfair advantage of other bidders.” *Licensing by Paola v. Sinatra (In re Gucci)*, 126 F.3d 380, 390 (2d Cir. 1997) (citations omitted).

63. As reviewed in footnote 3 in this Motion, Section 6(e), on page 19, of the APA recites that Epsilon “and its officers, directors, stockholders and agents are not creditors, stockholders, or Affiliates of the Seller, and are not insiders or Affiliates (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of any creditors of the Debtor or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the Debtor, subleasing space from the Debtor, or had any agreements (whether written or oral) with the Debtor or any of the Debtor’s creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the Seller to obtain the Court’s approval of the APA or to consummate the transactions contemplated by and under the APA.”

64. Further, as reviewed in footnote 4 in this Motion, although Epsilon is permitted in the APA to assign its rights under the APA to a Permitted Designee, Section 12(h), on page 30, of the APA makes it clear that “[i]n no event shall a Permitted Designee be an insider or Affiliate (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of the [Debtor] or of any creditors of the [Debtor], or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the [Debtor], subleasing space from the [Debtor], or had any agreements (whether written or oral) with the [Debtor] or any of the [Debtor’s] creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the [Debtor] to the Court’s approval of this Agreement or to consummate the transactions contemplated by and under this Agreement.

65. The APA is an arm’s length transaction, and the Debtor and Epsilon have at all times acted in good faith under applicable legal standards with respect thereto, and in all aspects of their communications and dealings. Epsilon is not in any way related to the Debtor or any of its creditors, nor does it have any interest in the Debtor’s or any creditors’ business or the Acquired Assets. There has been no “fraud, collusion between the purchaser and other bidders or the trustee, or any attempt to take grossly unfair advantage of other bidders.”⁹

66. The Debtor therefore requests that Epsilon be found to be a “good faith” purchaser within the meaning of Bankruptcy Code §363(m) and that the transaction is entitled to the protections of §§363(m) and (n) of the Bankruptcy Code.

Assumption and Assignment, and Rejection, under Section 365

⁹ Further, as reviewed below, the proposed Bidding Procedures Order annexed as Exhibit B sought by the Debtor in this Motion includes an express requirement that “Epsilon (in its capacity as a Bidder) and each Qualified Bidder participating in [any] Auction must confirm that it (i) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein...”.

67. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any . . . unexpired lease of the debtor.” The standard applied to determine whether the assumption or rejection of an unexpired lease should be authorized is the “business judgment” standard. See, e.g., In re Penn Traffic Co., 524 F.3d 373, 383 (2d Cir. 2008); In re Old Carco LLC, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); see also In re Orion Pictures Corp., 4 F.3d 1095, 1098-99 (2d Cir. 1993); In re Minges, 602 F.2d 38, 42 (2d Cir. 1979); NLRB v. Bildisco & Bildisco, 465 U.S. 513, 513 (1984); In re Roman Crest Fruit, Inc., 35 B.R. 939, 949 (S.D.N.Y. 1983).

68. As required by the APA, and in order to enhance the value to the Debtor of the Acquired Assets (by curtailing further administrative liability to the estate and eliminating rejection damage claims), the Debtor requests authority, under section 365 of the Bankruptcy Code, to assume and assign the Assumed Agreements to Epsilon or, alternatively, to the Successful Bidder at the Auction. The Debtor further requests that the Sale and Assumption/Assignment Order approving the Sale of the Acquired Assets provide that the Assumed Agreements will be transferred to, and remain in full force and effect for the benefit of, Epsilon (or the Successful Bidder at Auction) notwithstanding any provisions in the Assumed Agreements, including those described in sections 365(b)(2), (f)(1) and (f)(3) of the Bankruptcy Code, that prohibit such assignments.

69. As set forth above, the Debtor respectfully submits that it has a sound business justification for believing that its Assumption and Assignment of the Assumed Agreements, is the best course of action for the Debtor herein. The Debtor believes that the Assumption and Assignment in conjunction with the Sale will garner the highest and/or best offer available for

the Acquired Assets. Further, the Debtor cannot reorganize without this Sale and Assumption and Assignment.

70. Further, the Debtor respectfully submits that its requested rejection of the 2 agreements that Epsilon does not wish to assume, similarly represents a sound and reasonable exercise of its business judgment, and should be authorized by this Court under Bankruptcy Code Section 365.

71. Section 365(b)(1) of the Bankruptcy Code requires that, if there has been a default in a debtor's unexpired lease or executory contract, other than certain, nonmonetary defaults as set forth in the statute, such unexpired lease or executory contract may not be assumed unless, at the time of the assumption, (i) such default is cured or there is adequate assurance that such default will be cured, (ii) compensation or adequate assurance of compensation is provided for any actual pecuniary loss resulting from such default and (iii) adequate assurance of future performance under the lease is provided. 11 U.S.C. § 365(b)(1)(A)-(C).

72. Pursuant to the terms of the proposed Bidding Procedures Order, the Debtor will send the Cure Notice to all counterparties to the Assumed Agreements, notifying such counterparties of the potential assumption by the Debtor and assignment to Epsilon (or to the Successful Bidder at Auction) of the Assumed Agreements. The Cure Notice also will set forth the Cure Amount owing for each such Assigned Contract, according to the Debtor's books and records.

73. Counterparties to the Assumed Agreements will be given time (as will be set forth in the Bidding Procedures Order) to file an objection to the proposed Cure Amount set forth in the Cure Notice. To the extent no objection is filed with regard to a particular Cure Amount, such Cure Amount will be binding on the Debtor, Epsilon (or if Epsilon is not the Successful

Bidder, on such Successful Bidder) and the applicable Assigned Contract counterparty. The payment of the Cure Amounts specified in the Cure Notice (or a different amount either agreed to by the Debtor or resolved by the Court as a result of a timely-filed objection by an Assigned Contract counterparty) will be in full and final satisfaction of all obligations to cure defaults and compensate the counterparties for any pecuniary losses under such contracts or leases pursuant to section 365(b)(1) of the Bankruptcy Code, unless the Debtor determines, prior to the Sale Hearing, that a particular lease or contract is not truly executory, and does not need to be cured to transfer the Acquired Assets to Buyer.

74. Section 365(f)(2)(B) of the Bankruptcy Code states that a debtor may assign its unexpired leases and/or executory contracts if, *inter alia*, the assignee provides “adequate assurance of future performance.” 11 U.S.C. § 365(f)(2)(B). If necessary, Epsilon, or the Successful Bidder at the Auction, will be required to submit, among other things, written evidence of its ability to provide adequate assurance of future performance under the applicable contracts. Contract counterparties also will be able to challenge the Successful Bidder’s ability to provide adequate assurance as set forth in the Cure Notice.

75. Any Assumption and Assignment of an Assigned Contract will be subject to all of the provisions of such Assigned Contract, to the extent required by applicable law and in accordance with applicable provisions of the Bankruptcy Code. The Bidding Procedures are designed to ensure that any Successful Bidder is financially able and prepared to undertake all of the relevant obligations under the Assumed Agreements, and the Debtor will establish, as necessary, at the Sale Hearing, the requisite adequate assurance of future performance pursuant to section 365 of the Bankruptcy Code with respect to the potential Assumption and Assignment

of the Assumed Agreements. Consequently, the Debtor believes that the proposed Assumption and assignment of the Assumed Agreements is appropriate under the circumstances.

11 U.S.C. Section 1146: Exemption from Stamp or Similar Tax

76. In connection with the Acquired Asset sale, the Debtor, by this Motion, also seeks an Order, pursuant to Section 1146(c) of the Bankruptcy Code, decreeing and adjudging that the Sale is exempt from any and all stamp or similar transfer taxes (including state sales or use taxes) if a Chapter 11 plan is confirmed in the Debtor's case.

77. Section 1146(c) of the Bankruptcy Code provides that the making or delivery of an instrument of transfer under a confirmed Chapter 11 plan may not be taxed under any law imposing a stamp or similar tax. Specifically, Section 1146(c) provides that "[t]he issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of [the Bankruptcy Code], may not be taxed under any law imposing a stamp or similar tax." 11 U.S.C. §1146(c).

78. It is well settled that a transfer which is "necessary to consummation of a plan" (which is true in this case) is a transfer made under a plan within the meaning of Section 1146(c) of the Bankruptcy Code. In re Jacoby-Bender, Inc., 758 F.2d 840, 842 (2d Cir. 1985); In re Smoss Enters. Corp., 54 B.R. 950, 951 (E.D.N.Y. 1985).

79. It is equally settled that even a pre-confirmation sale of Debtor's assets, if the sale is essential to confirmation of the plan, is "under a plan" for purposes of Section 1146(c). See In re Smoss Enters. Corp., 54 B.R. at 951 (sale taking place three months before confirmation was "under a plan," and therefore tax exempt, when transfer of property was essential to confirmation of plan); In re 995 Fifth Ave. Assoc., LLP, 116 B.R. 384 (Bankr. S.D.N.Y. 1990), *aff'd* 127 B.R. 533 (S.D.N.Y. 1991).

80. It has been held that a transfer or sale of personal or real property pursuant to a plan of reorganization would not incur a state sales or transfer tax. In re A.H. Robins Co., 88 B.R. 741 (Bankr. E.D. Va. 1988).

81. The Debtor submits that the asset sale is “under a plan” within the meaning of Section 1146(c) of the Bankruptcy Code. Consummation of the asset sale is clearly essential to preparation and confirmation of a plan in this Chapter 11 case. The consideration to be paid upon consummation of the asset Sale may be sufficient to fund distributions under the plan. Given these circumstances, the asset Sale is one made "under a plan" and, therefore, should be exempt from the imposition of any stamp, sales, use or similar tax unless a plan shall not be confirmed. In such event, the ultimate purchaser of the Acquired Assets will pay any required transfer tax.

Request for Waiver of 14 Day Stay of Orders

82. Due to the expediency with which the Debtor needs to execute the Sale process, the Debtor requests that the Court waive the 14 day stay of any order entered pursuant hereto as provided for under Bankruptcy Rules 6004(h) or 6006(d) and that the Court make any such order effective and enforceable immediately upon its entry on this Court’s docket.

B. Request for Immediate Issuance of Bidding Procedures Order

83. The Debtor respectfully requests this Court to immediately issue a Bidding Procedures Order substantially in the form of the proposed Order annexed hereto as Exhibit B, without notice or hearing, under Bankruptcy Code Section 105(a)¹⁰, which authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the

¹⁰ See, e.g., Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“it is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process’”) (quoting In re Momentum Mfg. Corp., 25 F.3d 1132, 1136 (2d Cir. 1994)).

provisions of' the Bankruptcy Code, and Bankruptcy Rule 1001, which provides that the Bankruptcy Rules "shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding". (a) approving bidding, Auction, and objection procedures for the Sale, Assumption and Assignment, and Rejection, (b) approving up to a \$150,000 expense reimbursement to Epsilon ("Expense Reimbursement") as an administrative expense in the Debtor's case, to be paid if any other entity makes a higher or better offer which is approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Assumed Agreements, (c) approving a Sale Notice in the form annexed hereto as Exhibit C ("Sale Notice"), (d) approving a Notice of the Debtor's Potential Assumption and Assignment of Certain Executory Contracts and Cure Amounts in the form annexed hereto as Exhibit D ("Cure Notice"), and (e) establishing and approving the form and manner of service of the Sale Notice and Cure Notice.

BIDDING PROCEDURES

84. The Bidding Procedures Order shall require that any person or entity wishing to make a bid for the Acquired Assets, Leases, and Agreements must comply with the following procedures:

- (a) Any bidder(s) desiring to submit a bid(s) for the Acquired Assets must deliver such bid(s) in the form of a signed letter bid ("Bid") to (i) counsel to the Debtor, Attn: Neil Ackerman, Esq. and Kamini Fox, Esq. (nackerman@ackermanfox.com); and (ii) counsel to Epsilon, Andrew Gallo, Esq., Morgan, Lewis & Bockius, LLP, One Federal Street, Boston, MA 02110 (andrew.gallo@morganlewis.com) such that the Bid is actually received no later than 11:00 a.m. Eastern Time on a date which is not less than 1 business day prior to the Auction, which date shall be fixed by the Court in the Bidding Procedures Order (the "Bid Deadline").
- (b) Any Bid must be deemed "financially qualified" by the Debtor in its sole discretion in accordance with objective criteria set forth in the Bidding Procedures Order which, at a minimum, shall require any entity making a bid to evidence in writing that it has sufficient cash on hand or a binding

financial commitment from an established financial institution to ensure such entity's ability to meet its commitments pursuant to its Bid(s) whether made prior to or at the Auction.

- (c) Any Bid(s) shall become irrevocable until the conclusion of the Auction, if any, except as set forth below, and shall only be considered a "Qualifying Bid" ("Qualified Bid") if the Bid is delivered so as to be received by the Bid Deadline and meets **all** of the following requirements:
- i. The Bid must set forth the identity of the bidder (with name of contact person, address, phone number and email address), and if the entity making the bid is a business, the Bid must contain a description of the bidder(s)' business, and set forth the identity of the officer or authorized agent who will appear on behalf of such bidder at the Auction;
 - ii. The Bid must include such prospective bidder(s)' bank statements, financial statements or other information and documents reasonably satisfactory to the Debtor (in the Debtor's sole, unfettered discretion) to evidence the bidder's ability to close on a sale transaction, through written evidence that the bidder has sufficient cash on hand or a binding financial commitment from an established financial institution to ensure such entity's ability to pay all sums due pursuant to its Bid(s) whether the Bid is made prior to or at the Auction;
 - i. at a minimum, provides for aggregate consideration of at least \$50,000 over and above the Purchase Price (which expressly includes (A) the \$600,000.00 Cash Purchase Price, (B) all Cure Amounts required to be paid to the counterparties to Assumed Agreements to be assumed, as identified on the Schedule of Assumed Agreements which is included in the Schedules annexed hereto as **Exhibit G**), (C) any amount necessary to resolve the secured claim of NFS, Inc., plus (D) \$150,000 to pay the Expense Reimbursement to Epsilon (the "Overbid Amount Requirement");
 - ii. is not conditioned on the outcome of due diligence by the bidder(s) with respect to the Acquired Assets or the Assumed Agreements;
 - iii. is not conditioned on the bidder(s)' ability to obtain financing;
 - iv. The entity making the Competing Bid shall provide written evidence, satisfactory to the Court, the Debtor and the Debtor's counsel that there are no remaining corporate, partner, shareholder or regulatory approvals required of the entity making the Bid to consummate the transaction and the timing thereof.

- v. provides as good as or better terms, as determined by the Debtor in its sole discretion, as contained in the APA and all the Schedules and exhibits to the APA and this Motion;
 - vi. is accompanied by a good faith deposit of \$175,000.00 in cash or certified or cashier's check payable to the Debtor, which deposit shall be subject to the jurisdiction of the Bankruptcy Court, shall be maintained by the Debtor's attorney in a segregated non-interest bearing account, and shall (A) be retained by the Debtor in the event the bidder submits the Successful Bid (as defined below), which is approved by the Bankruptcy Court, but fails to consummate the sale, or (B) be returned to such bidder in the event the Bid is not the Successful Bid or is not approved by the Bankruptcy Court;
 - vii. is in the form of an executed asset purchase agreement in the same format as the APA which, subject only to acceptance by the Debtor and approval by the Bankruptcy Court, shall be binding on the bidder;
 - viii. is accompanied by a redline showing any changes made to the APA by or in the Bid, except that in no event may any proposed changes make the Bid less favorable to the Debtor than the Bid set forth in the APA.
- (d) If no Qualifying Bids (other than the bid of Epsilon as set forth in the APA) are received, the Debtor will request this Court at the Hearing to rule that Epsilon has made the highest and best bid for the Assets and Assumed Agreements ("Successful Bidder") and approve a sale to Epsilon pursuant to the APA. If a Qualifying Bid in addition to the bid by Epsilon is received, the Debtor shall hold an auction at this Court at the same date and time as the Hearing on the Debtor's Motion for approval of the sale (the "Auction").
- (e) If the Auction is held, all bidders with Qualifying Bids shall appear at such Auction in person, or through a duly authorized representative. Only bidders who have submitted Qualifying Bids may participate in the Auction. Before the commencement of the Auction, each bidder or its representative shall be required to provide the Debtor with proof satisfactory to the Debtor and the Debtor's counsel that such bidder or representative is legally empowered, by power of attorney or otherwise, and financially capable to (A) bid on behalf of the prospective bidder(s), and (B) complete and sign, on behalf of the bidder(s), a binding and enforceable purchase and sale and assignment agreement to acquire the Acquired Assets, and to perform its obligations with respect thereto.
- (f) Epsilon (in its capacity as a Bidder) and each Qualified Bidder participating in the Auction must confirm that it (i) has not engaged in any collusion with

respect to the bidding or sale of any of the assets described herein, (ii) has reviewed, understands and accepts the Bidding Procedures, (iii) is bound and intends to be bound by its asset purchase and (iv) has consented to the core jurisdiction of the Court.

- (g) The Auction shall be conducted by the Debtor and/or the Debtor's counsel, under the direction and supervision of the Court. Bidding will be conducted in minimum increments of \$50,000 ("Incremental Bid Amount"), *provided that* any incremental bids made by Epsilon shall be exempt from the Overbid Amount Requirement. The value of the Expense Reimbursement shall be added to any bid by Epsilon for purposes of valuing any bid by Epsilon at the Auction.
- (h) The Auction shall continue until the Debtor selects the highest or otherwise best offer (the "Successful Bid" and, the Bidder submitting such Successful Bid, the "Successful Bidder"). In selecting the Successful Bid, the Debtor may consider, among other things: (i) the amount and nature of the consideration, (ii) the number, type and nature of any changes to the Stalking Horse Agreement, (iii) the likelihood that the bidder will be available to satisfy any conditions to closing and the likely timing of any closing; (iv) the total consideration associated with the bid; and (v) the net benefit to the estate of the transaction and stakeholders.
- (i) All bidders shall be deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to the Auction and the sale of the Acquired Assets.
- (j) Subject to Bankruptcy Court approval following the Auction, the entity that makes the Successful Bid ("Successful Bidder") shall purchase the Acquired Assets free and clear of all liens, claims, encumbrances and interests, pursuant to the proposed Sale and Assumption/Assignment Order.
- (k) Upon the conclusion of the Auction and the selection of the Successful Bidder, the Debtor shall have the option of selecting one (1) Qualified Bid as the next highest or otherwise best Qualified Bid as back-up bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"). The Back-Up Bid shall remain open until the first business day following the closing of the sale of the Sale Assets to the Successful Bidder. The Debtor may designate the Back-Up Bidder to close the sale pursuant to its Back-Up Bid in the event the Successful Bidder fails to close, without further Court approval, and the Back-Up Bidder will be required to close the sale within two (2) days after such designation by the Debtor.
- (l) As soon as practicable after the closing of the Auction, the Debtor's Counsel will return the Qualifying Deposits to all other bidders, except for the

Successful Bidder and the Back-up Bidder, whose deposit shall be held until the closing on the Sale.

(m) The Successful Bidder must pay the balance of the Purchase Price for the Acquired Assets (the difference between the amount of the successful bid and the Qualifying Deposit) to the Debtor or its attorney, by bank check, or wire transfer, and all Cure Costs to counterparties to the Assumed Agreements that are being assumed, at the Closing (the "Closing").

(n) Additional and/or modified terms and conditions may be imposed by the Debtor and announced at the Auction.

Expense Reimbursement

85. As set forth above, Section 9(a)(i), on page 24, of the APA provides that Epsilon is, subject to this Court's approval, to be granted an Expense Reimbursement of its out-of-pocket expenses not to exceed \$150,000, as an administrative priority in the Debtor's case under Bankruptcy Code Sections 503(b) and 507(a), which administrative priority claim shall automatically be deemed to be expunged, and shall not be paid or due to be paid from the \$600,000 Cash Purchase Price, or from any monies received by the Debtor or from the sale, unless the Court directs or otherwise orders that the sale should be made by the Debtor to another higher or better offer made by a Qualified Bidder (as that term is defined in the APA and in the proposed Bidding Procedures Order) and Epsilon is not the successful bidder herein.

86. The Debtor respectfully requests this Court to allow such Expense Reimbursement to Epsilon. As set forth in Section 9(b) of the APA, the Debtor's negotiation of the APA with Epsilon was and is critical to obtaining the highest and best price for the Acquired Assets, and without Epsilon's commitment of substantial time and expense to the process, the Debtor would have to employ a less orderly process for the sale of its assets and therefore risk attracting lower prices. The Debtor acknowledges that Epsilon would not have invested the time

and incurred the expense of negotiating and documenting the transaction if it were not entitled to the Expense Reimbursement.

87. Further, the Debtor believes that Epsilon's willingness to commit to the APA (and to perform the activities necessary to consummate the purchase), subject to higher and better offers, provides substantial value by encouraging third parties to consider making a bid.

88. As set forth above, the Debtor and Epsilon are not affiliated in any way, engaged in extensive arm's-length negotiations regarding the proposed sale, and Epsilon consistently indicated that the Expense Reimbursement would be a critical component of its offer, negotiations, due diligence, and entry into the APA.

89. Epsilon's willingness to commit to the purchase, to continue to perform the activities necessary to consummate a sale and to serve as a "stalking horse" against which other prospective purchasers will be compared in and of itself represents a significant contribution to the Debtor's estate. As a result, by agreeing to pay the Expense Reimbursement, the Debtor has used its best efforts to ensure, at a minimum, that the Estate would have the benefit of an initial offer, without sacrificing the potential for interested parties to submit overbids at the hearing on approval of a Sale.

90. Finally, the amount of the Expense Reimbursement is fair and reasonable under the circumstances, especially due to the lack of a separate stalking horse break-fee. In this case, the Expense Reimbursement is well within the range typically paid in other sales transactions that have been consummated in context of a bankruptcy auction and should be awarded to Epsilon as compensation for its facilitation of the competitive auctioning of the Assets and Assumed Agreements, if Epsilon is not ultimately the Successful Bidder.

Sale Notice, Cure Notice, and Objections to Cure and/or Sale

91. The Debtor further requests that the Bidding Procedures Order approve the following Notice of the Sale and the proposed Assumption and Rejection of the Assets and Assumed Agreements, to be given, and to be deemed good and sufficient notice under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules and Orders of this Court, (a) by way of a Sale Notice in the form of the proposed Sale Notice annexed hereto as **Exhibit C** to be served as set forth below, (b) by way of the Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and Cure Amounts, and Rejection of Rejected Agreements, in the form of the proposed Cure Notice annexed hereto as **Exhibit D**, to be served as set forth below.

92. The Debtor proposes that the Sale Notice be served by first class postage prepaid mail by the Debtor or its attorneys not later than one day after the entry of the Bidding Procedures Order on (a) all entities known to have expressed an interest in a transaction with respect to the Acquired Assets; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Acquired Assets; (c) all federal, state and local taxing authorities which have a reasonably known interest in the relief requested by the Motion; (d) the New York Attorney General's office; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) the Office of the United States Trustee; (h) all persons or entities who have filed a notice of appearance or a request for receipt of all notices in this case notice of all pleadings filed in the Chapter 11 Case, (i) all known creditors of the Debtor, as reflected in the Debtor's schedules or amended schedules, or who filed a proof of claim in the Debtor's case as of the date of this Order; and (j) all known equity security holders of the Debtor, as reflected in the Debtor's list of equity security holders which was filed with this Court.

93. The Debtor proposes that the Cure Notice served by first class postage prepaid mail by the Debtor or its attorneys not later than one day after the entry of the Bidding Procedures Order on_ upon: (i) the Office of the United States Trustee; and (ii) all counterparties to the Assumed Agreements to be assigned.

94. The Debtor additionally requests that the Court provide and require in the Bidding Procedures Order that any and all objections to the proposed Sale of Acquired Assets, and/or the Assumption and Assignment of the Assumed Agreements to Epsilon or Rejection of the Rejected Agreements under the APA, including (a) any objection to the Cure Amount listed on the Schedule of Assumed Agreements, and (b) objections concerning the Assumption and Assignment of Assumed Agreements based upon Epsilon's ability to provide Adequate Assurance (collectively, "Objections"), must comply with the following procedures.

- (a) All such Objections must be made in writing which identifies the objecting entity (with name, address, name of contact person, phone number and email address) and its connection with this case, must state with particularity the grounds for such objections or other statements of position, and must be (i) filed with the Clerk of this Court, with copies for chambers as required by this Court's chambers rules, by not later than 11:00 a.m. Eastern Time on a date which is not less than 1 business day prior to the Hearing scheduled by the Court in the Bidding Procedures Order (the "Objection Deadline"), with proof that the Objection has been served so as to be actually received by such Objection Deadline by: (a) counsel to the Debtor, Ackerman Fox, LLP, 90 Merrick Avenue, Suite 400, East Meadow, New York 11554, Attn: Neil Ackerman, Esq. and Kamini Fox, Esq. (nackerman@ackermanfox.com); and (b) counsel to Epsilon, Andrew Gallo, Esq., Morgan, Lewis & Bockius, LLP, One Federal Street, Boston, MA 02110 (andrew.gallo@morganlewis.com) (collectively, the "Notice Parties").
- (b) Failure to file **and** serve an Objection to the Sale, Assumption and Assignment, or Rejection, on or before the Objection Deadline shall be deemed to be consent for purposes of sections 363(f) and 365 of the Bankruptcy Code .
- (c) Any objection to a Cure Amount set forth on the Cure Notice must be made in writing which states with specificity what cure amount is asserted to be

required (with appropriate documentation in support thereof) and must be filed and served on the Notice Parties by the Objection Deadline.

- (d) If no objection to a proposed Cure Amount set forth in the Cure Notice is timely filed and served as set forth herein, then the Cure Amount set forth in the Cure Notice shall be binding upon the non-Debtor party to the Assigned Lease and Agreement for all purposes, will constitute a final determination of the Cure Amount required to be paid by the Debtor or the prospective purchaser in connection with the assignment of any such Assigned Lease and Agreement to the Successful Bidder, and the non-Debtor party to the agreement shall be forever barred from asserting any other claims against the Debtor, Epsilon or the Successful Bidder (as appropriate), or the property of any of them, as to the Cure Amount.
- (e) If an objection is filed with respect to a proposed cure amount set forth in the Cure Notice, the dispute with respect to the Cure Amount may be resolved consensually, if possible, by the parties, or if the parties are unable to resolve their dispute, by this Court at the Hearing or another hearing to be scheduled by the Court.
- (f) If at any time after the entry of the Bidding Procedures Order, the Debtor identifies additional prepetition executory contracts and/or unexpired leases to be assumed and assigned as part of the Sale Transaction, the Debtor shall serve a supplemental Cure Notice in the same matter and on the same parties as the Cure Notice. A lease or contract counterparty receiving any such supplemental Cure Notice shall have until the later of (a) the Objection Deadline, or (b) ten (10) days from service of the supplemental Cure Notice to file an objection to the assumption and assignment of its contract(s) and/or leases(s) in accordance with the procedures set forth herein.

C. Request for Issuance of Order to Show Cause

95. The Debtor respectfully requests this Court to issue an Order to Show Cause substantially in the form annexed hereto as **Exhibit A**, scheduling an expedited hearing on the Proposed Sale of the Acquired Assets, the Assumption and Assignment of the Agreements and Leases, and the Rejection, to be held before January 23, 2017.

96. Under Bankruptcy Rule 2002(a)(2), the hearing on the Sale ordinarily must be held on at least 21 days' advance notice by mail.

97. Under LBR 6006-1(a), “A motion to assume, reject, or assign an executory contract or unexpired lease shall be served in accordance with the time limits set forth in Local Bankruptcy Rule 9006-1(b)¹¹, which may be waived or modified upon the written consent of all parties entitled to notice of the motion. In the event that a nonconsensual order is sought on less than fourteen (14) days' notice, Local Bankruptcy Rule 9077-1 shall govern and an actual hearing shall be held.”

98. Under Bankruptcy Rule 9006(f), three days must be added to the times set forth above for notice of the Sale and notice of the Assumption and Assignment and Rejection if service is done by mail.

99. As set forth above, the Debtor’s last date to assume or reject its Unexpired Real Property Leases has recently been extended by Order of this Court under 11 U.S.C. Section 365(d)(4)(A) for a period of 90 days following the 120th day after the Filing Date, through and including January 23, 2017.

100. Under 11 U.S.C. Section 365(d)(4)(B), “[i]f the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.”

101. Epsilon has made it clear that the Assumption and Assignment of the Unexpired Real Property Leases, along with the other Assumed Agreements, is key and essential to its offer under the APA.

102. As set forth in this Motion, the Debtor respectfully submits its sale of the Acquired Assets to Epsilon, subject to higher or better offers, under the APA, in conjunction

¹¹ LBR 9006-1(b) provides in pertinent part: “Except as otherwise ordered by the Court, or required by the Bankruptcy Rules, all other motion papers shall be served at least fourteen (14) days before the return date.”

with its Assumption and Assignment of the Assumed Agreements, is the best course of action for the Debtor herein. The Debtor believes that the Sale will garner the highest and/or best offer available for the Acquired Assets. Further, without the sale, not only will the Debtor be incapable of reorganizing, but also, there will be no funds available for distribution to the Debtor's unsecured creditors. Accomplishing a prompt, orderly liquidation of the Acquired Assets through a Section 363 Sale will ensure that the value of the Acquired Assets are maximized, and that the Debtor will be able to pay a sizable (and depending on the amount of claims that are ultimately allowed, perhaps even a 100% distribution) to its nonlandlord unsecured creditors. A sale to Epsilon will also resolve the claims of the Debtors' landlords (which will be cured) and NFS (which Epsilon will pay to terminate the lease and security interest) - thereby resolving \$3 million in claims against the estate.

103. The Debtor therefore respectfully requests that this Court schedule the Hearing on the Sale, and the Auction if Qualified Bids are filed and served within the time required under the Bidding Procedures Order, approval of the Sale, and Assumption and Assignment, on an expedited basis, before January 23, 2017, so that the Unexpired Real Property Leases can be assumed and assigned at a closing of the Sale to occur on or before January 23, 2017.

Request to Limit Notice

104. The Sale Notice is proposed to be served on the Office of the US Trustee, all known creditors and parties in interest, as well as all other entities who may have an interest in this case or the Sale.

105. The Cure Notice is being served on the Office of the US Trustee, and all counterparties to the Assumed Agreements to be assumed or rejected.

106. The Debtor respectfully requests that the Court authorize in the Order to Show Cause that service of the Order to Show Cause, this Motion and all the exhibits to this Motion be deemed to be good and sufficient notice if it is made to the Office of the US Trustee, all parties and entities that have appeared in this case at any of the hearings herein, or at the 341 meeting, in this case (60 Hudson, 75 Broad, NFS and N Plus), and all persons or entities who filed claims in this case on or prior to the Claims Bar Dates for more than \$2,000.00.

107. The Claims Register in the Debtor's case shows that 18 Claims have been filed herein. All of these claims are for less than \$2,000 except for (a) the New York State Department of Taxation and Finance (claim no. 2); (b) the New York City Department of Finance (claim no. 6)¹²; N Plus (claim no. 9); (c) 60 Hudson Owner LLC (claim no. 10, for pre-petition arrears under an Unexpired Real Property Lease); Abovenet/Zayo Group (claim no. 11)¹³; (d) 75 Broad LLC (claim no. 12, for arrears under an Unexpired Real Property Lease); (e) Rottenberg Lipman Rich, P.C. (claim no. 13); (f) NFS (claim no. 14; this is the secured creditor which shall be paid

¹² As set forth in prior Motions which the Debtor filed with this Court, the claim filed by the New York City Department of Finance ("NYC") in the amount of \$629,810.82, was comprised of two parts: \$496,469.35 for CRT (corporate rent taxes) estimated to be due for the period 6/1/2009-5/31/2016, and \$133,341.47 for general corporate taxes estimated to be due for the period 2002-2016. Since NYC filed this claim with the Court on September 12, 2016, the Debtor has filed returns with NYC showing \$0.00 due for CRT to NYC (or any other entity). Among other things, the Debtor's taxable basis is a negative number. The Debtor's principal Mark DuMoulin, Sr. and the accountant retained for the Debtor herein have been in regular communications with a representative in NYC's Finance Bankruptcy Division. All years have been marked filed, are shown as "Completed" and are shown as \$ 0.00 due in NYC's records online. The Debtor has not yet received confirmation from NYC, but the representative with NYC's Finance Bankruptcy Division that has been discussing this matter with the Debtor, has indicated that their Auditor is presently reviewing the filed CRT returns, and it is presently anticipated the asserted CRT tax will be reduced to \$0.00. It is also presently anticipated that the claim for general corporate taxes either will be substantially reduced or possibly "zeroed out".

¹³ The Debtor intends to dispute this claim.

by Epsilon in an amount to be negotiated by the parties); (g) JPMorgan Chase Bank, N.A. (claim no. 15)¹⁴; (h) BP Air Conditioning Corp. (claim no. 16); (i) Zayo Group (claim no. 17)¹⁵; and (j) Herbert Redl Inc. (claim no. 18, for arrears under an Unexpired Real Property Lease).

44. The Debtor has email addresses for all these entities either as listed on documents which they filed with the Court or through the Debtor's or the Debtor's attorneys' correspondence with these entities, except for the New York City Department of Finance, as to which the Debtor has been sending documents and receiving correspondence by fax.

45. The Debtor therefore respectfully requests that service of the Order to Show Cause and this Motion, with all exhibits, be deemed to be good and sufficient if given to all of these entities, and all other entitled entities, as follows: (a) service by email of the Court's Order, the Motion and all exhibits to the Motion, sent to (i) Paul Schwartzberg, Esq. of the Office of the U.S. Trustee, (ii) Arthur Goldstein, Esq., and Scott Markowitz, Esq., the attorneys for N+ herein (who also filed a notice of appearance herein), (iii) John G. Loughnane and Theresa A. Driscoll, Esq., the attorneys for the secured creditor herein NFS (who also filed a notice of appearance herein), (iv) Michael Simon, Esq., the attorney for the Debtor's landlord 60 Hudson Owner, LLC (who also filed a notice of appearance herein), (v) Burton Weston, Esq., the attorney for the Debtor's landlord 75 Broad LLC (who also filed a notice of appearance herein), (vi) the debtor's landlords CAF Vets, LLC (Attn: Chris Figoni), Herbert Redl, Inc. (Attn: Frank Redl), and 190 Realty Corp. (Attn: Michael Nissman), (viii) Jeffrey K. Cymbler, Esq., District Tax Attorney,

¹⁴ As set forth above, this is for monies due under a line of credit secured by a CD. The CD contains a little more than the amount due under this claim. It therefore is anticipated that this claim will be satisfied in full by the monies due in the CD.

¹⁵ The Debtor intends to dispute this claim.

ASSET PURCHASE AGREEMENT

BY AND AMONG

**EPSILON US INC.,
a Delaware corporation**

and

**METCOM NETWORK SERVICES, INC.,
a New York corporation**

January 10, 2017

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made and entered into as of January 10, 2017 (the "*Execution Date*"), by and among EPSILON US INC., a Delaware corporation or its Permitted Designees (as defined below) ("*Buyer*"); and METCOM NETWORK SERVICES, INC., a New York corporation ("*Seller*"). Seller and Buyer are sometimes referred to collectively as the "*Parties*" and individually as a "*Party*."

WITNESSETH:

WHEREAS, on June 28, 2016 (the "*Filing Date*"), Seller filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (as defined below), Case No. 16-11870 (the "*Bankruptcy Case*"), before the United States Bankruptcy Court for the Southern District of New York (the "*Court*"), and Seller continues to operate its business as a debtor-in-possession in the Bankruptcy Case; and

WHEREAS, after good faith, arms-length negotiations, Seller wishes to sell to Buyer and Buyer wishes to purchase from Seller substantially all of the assets of the Business (defined below), with the purpose of operating the Business after the sale as a going concern business, and not for liquidation purposes, and to assume from Seller certain specified liabilities of the Business pursuant to the terms and conditions of this Agreement and an order of the Court approving such sale under Sections 105, 363, 365 and 1146 of the United States Bankruptcy Code (11 U.S.C. § 101 *et. seq.*) (the "*Bankruptcy Code*"), and such sale will include the assumption and assignment of certain executory contracts and unexpired leases in accordance with Section 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS; INTERPRETATION.

(a) Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the respective meanings specified below:

"*Accounts Receivable*" means all rights to payment for goods sold, licensed or leased or for services rendered, all sums of money or other proceeds due or becoming due thereon and all instruments pertaining thereto.

"*Acquired Assets*" has the meaning set forth in Section 2(a).

"*Affiliate*" means, with respect to any Person, (i) a spouse or member of the immediate family of such Person, (ii) any member, manager, director, officer or partner of such Person, (iii) any corporation, partnership, business, association, limited liability company, firm or other entity of which such Person is a member, manager, director, officer or partner or owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock or other equity

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interests and (iv) any other Person that directly or indirectly controls, is controlled by or is under direct or indirect common control with such first Person.

“Agreement” has the meaning set forth in the preamble.

“Assumed Agreements” means the contracts, agreements (including without limitation colocation and connectivity agreements), commitments, understandings and instruments relating to or used in the conduct of the Business and the assumed real property leases and all other unexpired real property leases and unexpired personal property leases of Seller relating to property included in the Acquired Assets, all as set forth on the **Schedule of Assumed Agreements**, which Schedule may be amended from time to time by Buyer in accordance with Section 2(e)(i), *provided*, that any rejected contract, agreement, commitment, understanding, instrument, assumed real property lease or other unexpired real property lease or unexpired personal property lease set forth on the **Schedule of Rejected Agreements** as a “Rejected Agreement;” and any Seller’s Agreement not expressly designated as either an “Assumed Agreement” or “Rejected Agreement” by Buyer shall not be considered an “Assumed Agreement” for purposes of this Agreement.

“Assumed Liabilities” has the meaning set forth in Section 2(c).

“Assumption Agreement(s)” means that certain assignment and assumption agreement(s) to be executed and delivered by Seller and Buyer at Closing, in substantially the form of **Exhibit A** attached hereto.

“Auction” has the meaning set forth in Section 9(a)(i).

“Bankruptcy Case” has the meaning set forth in the recitals.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bid Procedures Order” has the meaning set forth in Section 9(a)(i).

“Bill(s) of Sale” has the meaning set forth in Section 4(b)(i).

“Books and Records” has the meaning set forth in Section 2(a)(vii).

“Business” means Seller’s entire Internet access, web hosting and communications services business, including, without limitation, all of Seller’s fiber optic telecommunications network located in the United States, and all of the rights, assets, customers and colocation and connectivity arrangements associated therewith, and all equipment, agreements and operations necessary to run the Business, including without limitation all of the Acquired Assets, Assumed Liabilities and Assumed Agreements; *provided, however*, that the Business shall not be deemed to include any Excluded Assets, Excluded Liabilities or Rejected Agreements.

“Business Day” means any day other than a Saturday, Sunday, legal holiday or other day on which commercial banks in New York, New York, are authorized or required by Law to be closed.

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“**Buyer**” has the meaning set forth in the preamble.

“**Buyer’s Closing Documents**” has the meaning set forth in Section 4(c).

“**Cash Purchase Price**” has the meaning set forth in Section 3(b).

“**Claim**” means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“**Closing**” has the meaning set forth in Section 4(a).

“**Closing Date**” has the meaning set forth in Section 4(a).

“**Code**” means the Internal Revenue Code of 1986, any amendments thereto, any successor statutes and any regulations promulgated thereunder.

“**Court**” has the meaning set forth in the recitals.

“**Cure Amounts**” means those amounts owed by Seller to the other parties under the Assumed Agreements, or those agreements that may be assumed after the Closing under Section 2(f) of this Agreement, and those actions required to be taken by Seller as determined by the Court or by agreement of the parties thereto so that Buyer takes the Assumed Agreements free and clear of any defaults and arrearages as of the Closing Date.

“**Customers**” means Seller’s entire end user customer base with regard to the Business, which are set forth on the **Schedule of Customers**.

“**Customer Contracts**” means any and all contracts and agreements related to the Customers.

“**Effective Time**” has the meaning set forth in Section 4(a).

“**Employees**” has the meaning set forth in Section 5(g).

“**Excluded Assets**” has the meaning set forth in Section 2(b).

“**Excluded Liabilities**” has the meaning set forth in Section 2(d).

“**Execution Date**” has the meaning set forth in the preamble.

“**Expense Reimbursement**” has the meaning set forth in Section 9(a)(i).

“**FCC**” has the meaning set forth below in the definition of “Governmental Authority.”

“**Fee**” has the meaning set forth in the recitals.

"Filing Date" has the meaning set forth in the preamble.

"Final Order" shall mean an order of the Bankruptcy Court as to which the time to appeal has expired and as to which no appeal, petition for certiorari, or other proceedings for reconsideration shall then be pending.

"Financial Statements" means Seller's financial statements with respect to the Business for the fiscal year ended December 31, 2015 and the nine months ending September 30, 2016, copies of which have been provided to Buyer by Seller.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Authority" means any agency, board, bureau, executive, court, commission, department, legislature, tribunal, instrumentality or administration of the United States, a foreign country or any state, provincial, territorial, municipal, county, local or other governmental entity in the United States or any foreign country, including without limitation the Federal Communications Commission ("**FCC**").

"Incremental Bid Amount" has the meaning set forth in Section 9(a)(i).

"Intellectual Property" means all U.S. and foreign, whether proprietary or pursuant to license, as the case may be: (a) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) registered and unregistered trademarks, including without limitation the name "**Metcom**," service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) registered and unregistered copyrightable works and copyrights, and all applications, registrations, and renewals in connection therewith; (d) mask works and all applications, registrations, and renewals in connection therewith; (e) trade secrets and confidential business information (including research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer lists, pricing and cost information, and business and marketing plans and proposals to the extent that any of the foregoing constitute trade secrets or confidential information used in connection with the operation of the Business); (f) computer software programs (including data and related documentation); (g) copyrighted software owned by third parties and leased or licensed to Seller; (h) Internet Protocol ("**IP**") space and IP addresses allocated or otherwise made available to Seller; (i) all source codes, object codes, executable codes, databases and files referenced by the codes and all media containing the same and all relevant explanations, documentation, flowcharts, logic diagrams and rules for the source codes; and (j) copies and tangible embodiments of any of the foregoing (in whatever form or medium).

"Inventories" means all inventories of raw materials, works in process, finished products, goods, spare parts, replacement and component parts, and office and other supplies.

“Knowledge of Seller” means the actual knowledge of Mark DuMoulin, Sr. and/or Susan B. DuMoulin.

“Law” means any law, statute, regulation, rule, code, ordinance or court order enacted, adopted, issued or promulgated by any Governmental Authority.

“Liability” or **“Liabilities”** means any and all liabilities, obligations, judgments, damages, charges, costs, debts and indebtedness of any and every kind and nature whatsoever, absolute or contingent, liquidated or unliquidated, in Law, equity or otherwise.

“Lien” means, with respect to any asset or property of any character, any mortgage, pledge, security interest, lien (including any mechanics or materialmen lien, tax lien, shipper or warehousemen lien or customs lien), right of first refusal, option or other right to acquire, transfer for security, charge, Claim, easement, conditional sale agreement, title retention agreement, defect in title, or other encumbrance or adverse Claim of any nature pertaining to or affecting such asset or property, whether voluntary or involuntary and whether arising by Law, contract or otherwise.

“Material Adverse Effect” means any change or changes in, or effect on, the Business or the Acquired Assets that is individually, or are in the aggregate, reasonably likely to be materially adverse to the business, financial condition or results of operations of the Business or the Acquired Assets, each taken as a whole, taking into account Seller’s current status as a filer under Chapter 11 of the Bankruptcy Code, other than (i) any change or effect in any way resulting from or arising in connection with this Agreement or any of the transactions contemplated hereby (including any announcement with respect to this Agreement or any of the transactions contemplated hereby); or (ii) changes in (A) economic, regulatory or political conditions generally or (B) general business or economic conditions relating to any industries in which Seller participates, which is not specific to such Seller, in each case which does not have a disproportionate effect on Seller.

“Most Recent Balance Sheet” means the unaudited balance sheet of the Business for the period ended September 30, 2016.

“Motions” has the meaning set forth in Section 9(a).

“Ordinary Course of Business” means the ordinary course of business of Seller and consistent with Seller’s past custom and practice (including with respect to quantity and frequency), taking into account the commencement of the Bankruptcy Case and the operation of Seller as a distressed company following the commencement of the Bankruptcy Case.

“Overbid Amount Requirement” has the meaning set forth in Section 9(a)(i).

“Permitted Designees” has the meaning set forth in Section 12(h).

“Permitted Encumbrances” means (i) statutory liens for current Taxes or assessments not yet due or delinquent, (ii) mechanics’ carriers’, workers’, repairers’ and other similar liens arising or incurred in the Ordinary Course of Business relating to obligations as to which there is no default on the part of Seller or the validity or amount of which is being contested in good

faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities which do not materially interfere with the present use of the Acquired Assets, and (v) such other liens, imperfections in or failure of title, charges, easements, rights-of-way, encroachments, exceptions, restrictions and encumbrances which do not materially interfere with the present use of the Acquired Assets and neither secure indebtedness or the payment of the deferred purchase price of property, nor individually or in the aggregate create a Material Adverse Effect.

"Person" means any individual, corporation, partnership, proprietorship, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, Governmental Authority, or other entity, organization or institution of any type whatsoever.

"Proprietary Information" has the meaning set forth in Section 8(g).

"Purchase Price" has the meaning set forth in Section 3(b).

"Qualifying Bidder" has the meaning set forth in Section 9(a)(i).

"Rejected Agreements" means those contracts, agreements, commitments, understandings, instruments, assumed real property leases and all other unexpired real property leases and unexpired personal property leases designated by Buyer under this Agreement which will not be assumed by Buyer under the Assumption Agreement(s), an initial list of such rejected agreements, to be amended from time to time by Buyer pursuant to Section 2(e)(i), being set forth on the Schedule of Rejected Agreements; and, notwithstanding any other provision hereof or any Schedule or Exhibit hereto and regardless of any disclosure to Buyer, any Seller's Agreement not expressly designated as either an "Assumed Agreement" or a "Rejected Agreement" by Buyer by the Closing Date shall be considered a "Rejected Agreement" for purposes of this Agreement.

"Sale Order" has the meaning set forth in Section 9(a)(ii).

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

"Seller's Agreements" means all contracts, agreements (including without limitation colocation and connectivity agreements), commitments, understandings, instruments, assumed real property leases and all other unexpired real property leases and unexpired personal property leases of Seller set forth on the Schedule of Seller's Agreements.

"Seller's Closing Documents" has the meaning set forth in Section 4(b).

"Subsidiary" means any corporation, partnership or limited liability company with respect to which a specified Person (or a Subsidiary thereof), directly or indirectly, owns a majority of the common stock or other equity interest, or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors, managers or other governing body of such corporation, partnership or limited liability company.

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“*Tax*” means any federal, state, provincial, local, foreign or other income, alternative, minimum, inheritance, accumulated earnings, personal holding company, corporation, franchise, capital stock, net worth, capital, profits, windfall profits, capital gain, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not).

“*Tax Return*” means any return, report, declaration, form, Claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“*Transferred Employees*” has the meaning set forth in Section 7(a).

“*Transaction Documents*” means, collectively, this Agreement, the Escrow Agreement, Seller’s Closing Documents and Buyer’s Closing Documents.

(b) Interpretation; Construction. The headings and captions of the various Sections of this Agreement have been inserted solely for purposes of convenience, are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. Unless stated to the contrary, all references to Sections, paragraphs or clauses herein shall be to the specified Section, paragraph or clause of this Agreement, and all references to Exhibits and Schedules shall be to the specified Exhibits and Schedules attached hereto. All Exhibits and Schedules attached hereto are made a part hereof. All terms defined herein shall have the same meaning in the Exhibits and Schedules, except as otherwise provided therein. All references in this Agreement to “this Agreement” shall be deemed to include the Exhibits and Schedules attached hereto. Words used herein, regardless of the number and gender used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires and, as used herein, unless the context otherwise requires, the words “hereby,” “hereof,” “herein” and “hereunder,” and words of similar import, shall refer to this Agreement as a whole and not to any particular provision hereof. The term “including” shall be deemed to mean “including, without limitation.” The word, “or,” shall not be construed to be exclusive. Provisions shall apply, when appropriate, to successive events and transactions. Accounting terms used herein shall have the meanings given to them by GAAP applied on a consistent basis. References to any Law shall be construed as a reference to the same as in effect on the date of this Agreement. Unless otherwise expressly stated, all dollar amounts stated herein are in United States currency.

2. **SALE AND PURCHASE OF ACQUIRED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES.**

(a) Purchase and Sale of Acquired Assets. At the Closing, pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy Code and on the terms and subject to the

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conditions precedent of this Agreement, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, accept and acquire from Seller, free and clear of any and all Liens and Claims (other than Permitted Encumbrances), as a going concern and business, and not for liquidation purposes, all of Seller's right, title and interest in and to the following (collectively, the "**Acquired Assets**"):

- (i) All Customers and Customer deposits and advance payments;
- (ii) All fiber optic capacity owned by Seller, all telecommunications and computer equipment, and all furniture, furnishings, automobiles, tools, parts and similar property;
- (iii) All Inventories of Seller;
- (iv) All equipment owned or leased by Seller, subject to the Lien of NFS Leasing, Inc. ("**NFS**"), including, without limitation, as set forth on the **Schedule of Equipment**;
- (v) The Assumed Agreements, to the extent the same are assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, and all rights thereunder for and pertaining to all periods from and after the Effective Time, including any right (A) to receive payment for products sold or services rendered from and after any such Assumed Agreement's assumption by Buyer; and (B) to assert Claims and take other rightful actions in respect of breaches, defaults and other violations of such contracts, arrangements, licenses, leases and other agreements to the extent such violations occur from and after the time at which any such Assumed Agreement is actually assumed by Buyer;
- (vi) All Intellectual Property used by Seller in connection with the Business, together with all related income, royalties, damages and payments due or payable at the Closing or thereafter (including, without limitation, damages and payments for past or future infringements or misappropriations thereof), the right to sue and recover for past infringements or misappropriations thereof, any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property; and except to the extent that it is employed solely in connection with Excluded Assets, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against infringement thereto and rights to protection of interest therein under the laws of all jurisdictions, including any Intellectual Property arising after the date hereof;
- (vii) Originals or copies of all books, records, manuals and other materials (in any form or medium) relating to or used in the Business, or with regard to the Acquired Assets, Assumed Liabilities, Assumed Agreements and Transferred Employees (subject to any necessary consents of such Transferred Employees) (collectively, "**Books and Records**"), including any computerized data bases and files and programs and associated software and including advertising matter, catalogues, price lists, correspondence, mailing lists, Customer lists, supplier lists, vendor lists, distribution lists, photographs, production data, sales

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and promotional materials and records, purchasing materials and records, operating records, Tax records, manufacturing and quality control records and procedures, blueprints, research and development files and records, data books, Intellectual Property disclosures, media materials and plates, accounting records, sales order files and litigation files, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of Seller including books of account, all Customer telephone numbers, addresses and other contact information, lock box account numbers, billing records and other Customer correspondence relating to the Business, all regulatory filings and other Books and Records relating to the rates and services provided by Seller in connection with the operation of the Business;

(viii) All manufacturer warranties and similar rights in favor of Seller with respect to any Acquired Asset;

(ix) All accounts (except as set forth in **Section 2(b)** below), Accounts Receivable (except as set forth in **Section 2(b)(iii)** below), notes and notes receivable which are payable to Seller or its Affiliates and relate to the Business; all guaranties and security therefor, and all goods and services giving rise thereto and the rights pertaining to such goods and services and all related insurance and insurance proceeds with respect thereto and all security deposits and prepayments, prepaid expenses, deposits and advances related to the Business, whether or not reflected on Seller's Books and Records;

(x) To the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, all confidentiality, noncompete or nondisclosure agreements executed by vendors, suppliers or employees of Seller or other third parties, in each case, relating to the Business;

(xi) To the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the insurance providers, all insurance policies of Seller or their Affiliates and any proceeds received thereunder that relate to the Business;

(xii) Except as set forth on the Schedule of Excluded Claims and Rights and subject to Section 2(b)(iv), all of the rights, Claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment of Seller against a third party and relating to the Acquired Assets, the Business and the Assumed Liabilities arising out of transactions occurring prior to the Closing Date, except where such rights, Claims or causes of action relate to Excluded Assets or Excluded Liabilities; to the extent such rights, Claims or causes of action relate to both Assumed Liabilities and Excluded Liabilities, Buyer and Seller shall share such rights, Claims or causes of action in the same proportion as their respective Liabilities bear to the total liability relating to those rights, Claims or causes of action; and

(xiii) All Customer lockbox accounts.

(b) Excluded Assets. Notwithstanding anything to the contrary contained in Section 2(a) or any other provision of this Agreement, the Acquired Assets shall not include the following properties and assets of Seller (collectively, the "**Excluded Assets**"): LS

(i) All cash and cash equivalents (expressly including all monies in Seller's possession or in any of Seller's bank accounts as of the Closing Date), all bank, custody and investment accounts, and CDs (other than accounts described in Section 2(a)(ix) and Section 2(a)(xii)), and all marketable securities;

(ii) All deposits, withholdings, prepayments, credits and refunds of Seller or its Affiliates not related to the Business;

(iii) All Accounts Receivables for services, space, facilities or otherwise that were billed or invoiced by Seller on or prior to January 2, 2017 but were not yet paid by third parties to Seller as of Closing;

(iv) All Claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment (x) relating to the Excluded Assets, or (y) that have accrued, arisen or been asserted against any Person or that relate to any period before the Effective Time, in each case which do not relate primarily to the Acquired Assets (including fiduciary duty claims, tort claims and Claims against current and former employees of Seller that accrued prior to Closing), all rights and powers of a trustee and debtor-in-possession against any Person whatsoever, including all avoidance powers granted to Seller under the Bankruptcy Code and all causes of action and remedies granted pursuant to Sections 502, 510, 541, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

(v) All rights of Seller and its Affiliates in, to and under any Rejected Agreements;

(vi) All capital stock or other equity interest of Seller;

(vii) The certificates or articles of incorporation and certificates or articles of formation, qualifications to conduct business as a foreign entity, taxpayer and other identification numbers, seals, minute books, stock/interest transfer books, blank stock certificates, and other corporate or company documents and records relating to the organization or maintenance of the corporate or company existence of Seller;

(viii) All assets held by or for the account of Seller or its Affiliates or employees pursuant to the terms of any deferred compensation, incentive compensation, welfare or other employee benefit plan, or the assets of any related trust described in Section 401 of the Code;

(ix) All rights that accrue to Seller under this Agreement;

(x) Any Governmental Permit or similar right that by its terms or applicable Law is not transferable to Buyer;

(xi) Rights to any Tax refunds of Seller, whether such refund is received as a payment or as a credit against future Taxes;

(xii) Any bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, phantom stock, leave of absence, layoff, vacation, day or

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dependent care, legal services, cafeteria, life, health, accident, disability, workmen's compensation or other insurance, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, or whether for the benefit of a single individual or more than one individual including, but not limited to, any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended; and

(xiii) All rights and claims of Seller against N Plus Systems, LLC ("N Plus"), with respect to rent, power charges, electricity charges, and any other or further monies, costs or charges due to be paid to Seller including but not limited to for services, such as but not limited to Engineering, Installation, Troubleshooting, Environmental Service or any other Labor, Item or request of service from and including January 1, 2017 through the date that N Plus vacates the Premises, in good funds, under par. 4 of a certain Stipulation between N Plus and the Debtor which was approved by Order of the Bankruptcy Court; provided, however, that any rights and claims against N Plus or any of N Plus's principals, owners, agents, employees, attorneys or other professionals arising out of any agreement between Buyer and N Plus, including the assignment of that certain Colocation Agreement as set forth in Section 10(a) hereof, shall remain property of Buyer.

(c) Assumption of Liabilities. On the Closing Date, Buyer shall execute and deliver to Seller one or more Assumption Agreement(s) pursuant to which Buyer shall assume and agree to discharge solely the Liabilities of Seller under the Assumed Agreements accruing from and after the assumption of each such Assumed Agreements (collectively, the "*Assumed Liabilities*").

(d) Excluded Liabilities. Notwithstanding any other provision hereof or any Schedule or Exhibit hereto and regardless of any disclosure to Buyer, other than the Assumed Liabilities or as otherwise expressly set forth in this Agreement or the other Transaction Documents, Buyer shall not assume or be obligated or be responsible to pay, perform, satisfy or otherwise discharge any Liabilities whatsoever (collectively, the "*Excluded Liabilities*").

(e) Assumption of the Assumed Agreements. The Sale Order shall provide for the assumption by Seller and assignment to Buyer of the Assumed Agreements, effective upon the Closing, on the following terms and conditions:

(i) Assumption and Assignment. On the Closing Date Seller shall assume, and Seller shall assign to Buyer, the Assumed Agreements. The Assumed Agreements shall also be identified by the date of the Assumed Agreement, the other party or parties to the Assumed Agreement and the address of such party or parties set forth on the Schedule of Assumed Agreements, all included on an exhibit attached to the Sale Motion for authority to assume and assign such Assumed Agreements. Such exhibit shall set forth the proposed Cure Amounts, if any, under each of such Assumed Agreements as determined by Seller based on Seller's Books and Records, subject to amendment of the Cure Amounts from time to time to the extent Buyer and the other party to such Assumed Agreement agree to a lesser Cure Amount.

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(ii) Payment of Cure Amounts. Buyer shall be responsible for the payment of any and all Cure Amounts with respect to the Assumed Agreements to the extent the Cure Amount does not exceed the Cure Amount listed for such Assumed Agreement on the Schedule of Assumed Agreements. Seller shall be responsible for any Cure Amounts in excess of the amounts set forth on the Schedule of Assumed Agreements.

(f) Post-Closing Assignment of Contracts. With respect to any Contract not set forth on the Schedule of Assumed Agreements, and provided such Contract has not been rejected by Seller pursuant to Section 365 of the Bankruptcy Code, upon written notice(s) from Buyer, as soon as practicable, Seller shall take all actions reasonably necessary to assume and assign to Buyer pursuant to Section 365 of the Bankruptcy Code any Contract(s) set forth in Buyer's notice(s); provided that any applicable Cure Amount shall be satisfied by Buyer. Seller acknowledges and agrees that (i) Seller shall provide Buyer with reasonable advance notice of any motion(s) to reject any Contract and (ii) the covenant set forth in this Section 2(f) shall survive the Closing. Notwithstanding anything in this Agreement to the contrary, on the date any Contract is assumed and assigned to Purchaser pursuant to this Section 2(f), such Contract shall be deemed an Assumed Agreement for all purposes under this Agreement.

3. PURCHASE PRICE.

(a) Security Deposit. Within two (2) Business Days of the entering of the Bid Procedures Order, Buyer shall deliver or cause to be delivered by wire transfer or by a certified or cashier's check, the amount of \$131,000 (the "Security Deposit") to Ackerman Fox, LLP, as escrow agent (the "Escrow Agent"), pursuant to the terms and conditions of this Section 3(a) and of an escrow agreement in the form attached hereto as Exhibit B (the "Escrow Agreement") to be executed by Buyer, Seller and the Escrow Agent at the time of delivery of the Security Deposit. At the Closing, the Security Deposit held by the Escrow Agent shall be credited against the Purchase Price (as defined below). If this Agreement is terminated prior to Closing, the Security Deposit shall be distributed in accordance with Section 11(b).

(b) Purchase Price. The purchase price for the Acquired Assets shall be (i) \$600,000 (the "Cash Purchase Price") plus (ii) the Cure Amounts paid by Buyer (such sum, the "Purchase Price"). At the Closing, Buyer shall deliver, or cause to be delivered, to Seller by wire transfer in immediately available funds to (an) account(s) designated in writing by Seller to Buyer prior to the Closing, an amount equal to the Cash Purchase Price minus the Security Deposit.

(c) Allocation of Purchase Price. Buyer and Seller shall use commercially reasonable efforts to agree as to the allocation of the Purchase Price pursuant to Section 1060 of the Code and the rule and regulations thereunder. Buyer and Seller agree to use such allocation in filing all required forms under Section 1060 of the Code and all other Tax Returns, and Buyer and Seller further agree that they shall not take any position inconsistent with such allocation upon any examination of any such Tax Return, in any refund claim or in any Tax litigation. Upon the request of the other, Buyer and Seller agree to provide the other information reasonably necessary to complete Form 8594. Not later than thirty (30) days prior to the filing of their respective Forms 8594 relating to this transaction, each party shall deliver to the other party a copy of its Form 8594. In the event of a dispute with respect to any part of

the allocation of the Purchase Price, Buyer and Seller shall attempt to reconcile their differences and any resolution by them as to any disputed allocation shall be final, binding and conclusive on the parties. If Buyer and Seller are unable to reach a resolution on such differences within thirty (30) days after the date any such dispute arise, Buyer and Seller shall submit the disputed allocations for determination and resolution to the Court, which shall be instructed to determine and report to the parties, upon such disputed allocations, and such report shall be final, binding and conclusive on the parties hereto with respect to the disputed allocations.

4. CLOSING; CLOSING DOCUMENTS.

(a) Closing. The closing ("**Closing**") of the transactions contemplated hereby shall take place as soon as practicable following the date of entry by the Court of the Sale Order in the Bankruptcy Case (provided that the Sale Order is not subject to any stay) (such date, the "**Closing Date**"), at the offices of Morgan, Lewis & Bockius LLP, 101 Park Ave. New York, NY 10178-0060 (or such other place as may be mutually agreeable to the parties). Closing shall be effective as of 12:01 a.m. on the Business Day immediately following the Closing Date (the "**Effective Time**").

(b) Deliveries by Seller. Subject to the fulfillment or waiver of the conditions set forth in Section 10(b), at Closing, Seller shall deliver, or cause to be delivered, to Buyer the following (the "**Seller's Closing Documents**");

(i) One or more duly executed Bill(s) of Sale for the assets to be conveyed to Buyer substantially in the form of Exhibit C attached hereto (each, a "**Bill of Sale**");

(ii) Duly executed counterpart(s) of one or more Assumption Agreement(s) for Assumed Agreements to be assigned and assumed by Buyer on the Closing Date;

(iii) A certified copy of the Sale Order;

(iv) A certificate of Seller, dated as of the Closing Date, substantially in the form attached hereto as Exhibit D, duly executed by Seller;

(v) A duly executed Non-Competition Agreement from Seller; and

(vi) Such other endorsements, assignments and instruments as are contemplated by this Agreement or as are reasonably deemed necessary by Buyer or Buyer's legal counsel to consummate the sale transactions (as contemplated in the Sale Order), duly executed by Seller.

(c) Deliveries by Buyer. Subject to the fulfillment or waiver of the conditions set forth in Section 10(a), at Closing, Buyer shall deliver to Seller the following (the "**Buyer's Closing Documents**");

(i) Duly executed counterpart(s) to one or more Assumption Agreement(s) for Assumed Agreements to be assigned to and assumed by Buyer on the Closing Date;

(ii) A certificate of Buyer, dated as of the Closing Date, substantially in the form attached hereto as **Exhibit E**, duly executed by Buyer; and

(iii) Such other instruments as are contemplated by this Agreement or as are reasonably deemed necessary by Seller or Seller's legal counsel to consummate the sale transactions (as contemplated in the Sale Order), duly executed by Buyer.

5. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents and warrants to Buyer that the statements contained in this Section 5 are true, correct and complete as of the Execution Date and will be true, correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the Execution Date throughout this Section 5), except as set forth in the disclosure schedules accompanying this Agreement (the "**Disclosure Schedules**"). The Disclosure Schedules shall be arranged and correspond to the lettered and numbered paragraphs contained in this Section 5.

(a) Organization, Qualification and Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. Seller has full corporate power and authority (i) to own or lease and to operate its properties and assets (including the Acquired Assets) and to carry on the Business as it is now being conducted and (ii) to enter into this Agreement and each of the other Transaction Documents to be entered into by Seller and to carry out its obligations hereunder and thereunder. The execution, delivery and performance by Seller of this Agreement and each other Transaction Document to be entered into by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, have been approved by all necessary corporate action on the part of Seller. This Agreement and each of the Transaction Documents to which it is a party shall have been duly executed and delivered by Seller and, subject to the approval of the Court, shall constitute the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with their terms.

(b) No Approvals; Conflict. Except for (and subject to obtaining) the approval of the Court and any other approvals of Governmental Authorities identified in **Schedule 5(b)**, and except for (and subject to obtaining) any consents required in connection with the assignment to Buyer of the Assumed Agreements (which consents are identified in **Schedule 5(b)**), the execution, delivery and performance by Seller of this Agreement and the Transaction Documents, the fulfillment of and compliance with the respective terms and provisions hereof and thereof by Seller, and the consummation of the transactions contemplated hereby and thereby by Seller do not and will not (i) require any consent, authorization or approval of or any filing or registration with any Governmental Authority or other Person; (ii) result in a breach of any material obligation; (iii) constitute a default or an event creating rights of acceleration, termination or cancellation or a loss of material rights; or (iv) result in the creation or imposition of any Lien upon any of the Acquired Assets, in each case under any

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provision of (A) the certificate of incorporation or by-laws of Seller; or (B) any material contract, lease or agreement to which Seller is a party.

(c) Litigation. Except as set forth on **Schedule 5(c)** and except for the Bankruptcy Case, there is no litigation, action, lawsuit, Claim, audit, review, examination, inquiry, proceeding or investigation pending or, to the Knowledge of Seller, threatened against Seller: (i) that relates to any of the Acquired Assets or the Business, (ii) in which Seller is the plaintiff or claimant; or (iii) that questions the legality or propriety of the transactions contemplated by this Agreement or any of the other Transaction Documents. Except as set forth in **Schedule 5(c)**, there is no outstanding order, writ, injunction, or decree of any Governmental Authority against or affecting any of the Acquired Assets or the Business.

(d) Financial Statements. Seller has made available to Buyer the Financial Statements. The Financial Statements (including the notes thereto) (i) were derived from Seller's historical records relating to the Business; (ii) fairly present in all material respects the items contained thereon; (iii) have been prepared in accordance with GAAP, applied on a consistent basis throughout the period covered thereby; and (iv) present fairly the financial condition of Seller for such period in accordance with GAAP. Seller has made available to Buyer all of their monthly operating reports filed with the Court.

(e) Title to Acquired Assets. Except for Permitted Encumbrances, Seller has, and at the Closing Buyer shall obtain, good and marketable title to, or a valid license or leasehold interest in, all of the Acquired Assets, free and clear of all Liens (other than Permitted Encumbrances). Except as set forth on **Schedule 5(e)**, Seller has not licensed or otherwise granted any person or entity any right or interest in any of the Acquired Assets. No Person currently maintains any Claim, and, no Person has a valid basis for claiming that the operation of the Business or the use of the Acquired Assets infringes, violates or has violated any licensing agreement, patent, non-competition, confidentiality or trademark right or copyright or other rights of any other Person.

(f) Seller's Agreements. The **Schedule of Seller's Agreements** lists all of Seller's Agreements. Except as set forth in **Schedule 5(f)**, Seller has not assigned, transferred, pledged or otherwise conveyed its rights under any of Seller's Agreements. Except as set forth on **Schedule 5(f)**, Seller's right, title and interest in and to each of Seller's Agreements, is fully assignable to Buyer and, for any of Seller's Agreements that are or become Assumed Agreements prior to the end of the Transition Period, each such Seller's Agreement shall be in full force and effect and Seller will not be in default thereunder. Seller has made available to Buyer current, accurate and complete copies of all Assumed Agreements.

(g) Employees. **Schedule 5(g)** lists (i) all current employees of Seller working in the Business (the "**Employees**"), (ii) each Employee's current salary, and accrued but unused vacation, personal or sick time; and (iii) all employment agreements and termination and/or separation agreements between Seller and the Employees, including without limitation any severance arrangements.

(h) Brokers' Fees. Seller has no Liability to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or for which Buyer could become liable or obligated.

(i) Intellectual Property. Except as set forth in Schedule 5(i), Seller owns or is licensed to use the Intellectual Property used by it in connection with the Business. Schedule 5(i) identifies each patent or registration which has been issued to Seller with respect to any of its Intellectual Property, identifies each pending patent application or pending application for registration which Seller has made with respect to any of their Intellectual Property, and identifies each license or sublicense which Seller has granted to any third party with respect to any of their Intellectual Property. Schedule 5(i) identifies each item of Intellectual Property that any third party owns and that Seller uses pursuant to license or sublicense, other than "shrink-wrap" or "off the shelf" software. Seller has not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and neither Seller nor any of its directors and officers (and Employees with responsibility for Intellectual Property matters) has ever received any charge, complaint, Claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any Claim that Seller must license or refrain from using any Intellectual Property rights of any third party). To the Knowledge of Seller, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of Seller or their Subsidiaries. The Intellectual Property set forth on Schedule 5(i) includes all Intellectual Property necessary to continue to operate the Business in the Ordinary Course of Business.

(j) Governmental Permits.

(i) Each Seller owns, holds or possesses all licenses, franchises, permits, privileges, immunities, regulatory approvals and other approvals and authorizations from a Governmental Authority which are necessary to entitle it to own or lease, operate and use the Acquired Assets and to carry on and conduct the Business as currently conducted (collectively, "Governmental Permits"). Schedule 5(j)(i) sets forth a list of each Governmental Permit.

(ii) Except as set forth in Schedule 5(j)(ii), (A) Seller has fulfilled and performed its obligations under each of the Governmental Permits, and no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Governmental Permit or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Governmental Permit, or which might adversely affect the rights of the Seller under any such Governmental Permit; (B) no notice of cancellation, of default or of any dispute concerning any Governmental Permit, or of any event, condition or state of facts described in the preceding clause, has been received by, or is known to, either Seller; and (C) each of the Governmental Permits is valid, subsisting and in full force and effect and will continue to be in full force and effect immediately after the Closing, in each case without (x) the occurrence of any breach, default or forfeiture of rights hereunder, or (y) the consent, approval, or act of, or the making of any filing with, any Governmental Body.

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(iii) Except as set forth in **Schedule 5(j)(iii)**, the operations of Seller are in compliance with the terms and conditions of the Governmental Permits and with the Communications Act of 1934, as amended, the rules, regulations, orders, and policies promulgated by the FCC; applicable state law and the rules, regulations, orders, and policies promulgated by the regulatory authorities in the states in which the Seller engages in the Business ("**State Regulators**"); and applicable local law and the rules, regulations, orders, and policies (the "**Communications Laws**") promulgated by any municipality in which Seller engages in the Business ("**Municipalities**"), including, without limitation, the obligations of Seller to make any payment to finance regulatory funding mechanisms such as federal or state universal service funds, telecommunications relay service, local number portability, administration of the North American Numbering Plan, and emergency calling services and comply with the provisions of the Communications Assistance for Law Enforcement Act and the FCC's rules and regulations for the safeguarding of customer proprietary network information and for the handling of 911 calls.

(iv) Except as set forth in **Schedule 5(j)(iv)**, (A) Seller has made all required filings with the FCC, the State Regulators, and the Municipalities required to conduct the Business, comply with the Communications Laws, and maintain the Governmental Permits, (B) Seller has made all payments that have become due as required by the Communications Laws and has no overdue payments owed to the FCC, State Regulators, Municipalities, or any other related agency, including but not limited to the Universal Service Administrative Company, Telecommunications Relay Service administrators, and their State equivalents and (C) Seller maintains on file with the FCC and State Regulators all required tariffs, which tariffs accurately list such Seller's service offerings and the rates therefor.

(v) Except as set forth in **Schedule 5(j)(v)**, no petition, action, investigation, notice of violation or apparent liability, notice of forfeiture, order to show cause, complaint, or proceeding is pending concerning Seller's compliance with the Communications Laws or is seeking to revoke, reconsider the grant of, cancel, not renew, suspend, condition or otherwise place restrictions on, or modify any of the Governmental Permits, or to Seller's Knowledge, threatened before any Governmental Body; and no event has occurred that would reasonably be expected to result in any of the actions so described.

(vi) Except for the applicable requirements of the Communications Laws, and as set forth on the attached **Schedule 5(j)(vi)**, (i) Seller is not required to submit any notice, report or other filing with any Governmental Body in connection with the execution, delivery or performance by it of this Agreement or the consummation of the transactions contemplated hereby and (ii) no consent, approval or authorization of, or declaration to or filing with, any court, legislative, executive, administrative, governmental or regulatory authority or any other party or Person is required to be obtained by Seller in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

(vii) Except as set forth on **Schedule 5(j)(vii)**, there are no unresolved customer complaints (formal or informal) against either Seller pending before the FCC, State Regulators, State Attorneys General or other Governmental Body.

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(k) Acquired Assets. The Acquired Assets transferred to Buyer at the Closing will be sufficient to enable Buyer to operate the Business immediately following the Closing in the same manner in which Seller operated the Business on the date immediately preceding the Closing Date. Seller owns or leases all buildings, machinery, equipment and other tangible assets necessary for the conduct of the Business as presently conducted and as presently proposed to be conducted. Each Acquired Asset is free from defects (subject to normal wear and tear), has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used.

(l) Disclosure. No representation or warranty by Seller contained in this Agreement, and no statement contained in the Schedules delivered by Seller pursuant to this Agreement, contains any untrue statement of material fact or omits to state any material fact necessary, in light of the circumstances under which it was made, to make the statements herein or therein no misleading.

(m) Undisclosed Liabilities. Seller has no Liabilities except for (i) Liabilities set forth on the face of the Most Recent Balance Sheet, (ii) Liabilities which have arisen after the date of the Most Recent Balance Sheet in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law), and which are not individually or in the aggregate, material, (iii) Liabilities set forth in Schedule 5(m), and (iv) any debts listed in Schedules D, E or F of the Schedules or Amended Schedules which have been filed by Buyer in the Bankruptcy Case, as attached to Schedule 5(m), or as may be set forth in any proof of claim which is or may be filed in Buyer's Bankruptcy Case including but not limited to any filed on or before the last date for filing claims against Buyer as set forth in the Court's Order dated September 16, 2016.

(n) Insurance. All contracts of insurance in force as of the date of this Agreement with respect to the Business are in full force and effect. Seller has complied in all material respects with the terms and conditions of all such contracts, has timely paid all premiums thereunder and has not received notice of cancellation of any such insurance. There is no claim by Seller pending under any such contracts as to which coverage has been questioned, denied or disputed by the underwriters of such contracts.

(o) Legal Compliance. Seller has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, Claim, demand, or notice has been filed or commenced against any of them alleging any failure so to comply.

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller that the statements contained in this Section 6 are true, correct and complete as of the Execution Date and will be true, correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the Execution Date throughout this Section 6).

(a) Organization, Qualification and Authority. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has full corporate power and authority to enter into this Agreement and each of the other Transaction Documents to be entered into by Buyer and to carry out its obligations hereunder and thereunder. The execution, delivery and performance by Buyer of this Agreement and of each other Transaction Document to be entered into by Buyer, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been approved by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding agreement of Buyer, enforceable against it in accordance with its terms.

(b) No Approvals; Conflict. Except for the approval of the Court, the execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents, the fulfillment of and compliance with the respective terms and provisions hereof and thereof by Buyer and the consummation of the transactions contemplated hereby and thereby by Buyer do not and will not require any consent, authorization or approval of or any filing or registration with any Governmental Authority or other Person.

(c) Litigation. There is no litigation, action, lawsuit, Claim, audit, review, examination, inquiry, proceeding or investigation involving Buyer pending or, to Buyer's knowledge, threatened which questions the legality or propriety of the transactions contemplated by this Agreement or any of the other Transaction Documents.

(d) Brokers' Fees. Buyer has no Liability to pay any fees or commissions to any broker or finder with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

(e) Affiliates. Buyer and its officers, directors, stockholders and agents are not creditors, stockholders, or Affiliates of the Seller, and are not insiders or Affiliates (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of any creditors of the Seller or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the Seller, subleasing space from the Seller, or had any agreements (whether written or oral) with the Seller or any of the Seller's creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the Seller to obtain the Court's approval of this Agreement or to consummate the transactions contemplated by and under this Agreement.

7. EMPLOYEES.

(a) Buyer shall either (i) extend offers of employment (contingent upon the Closing) to the Employees of Seller listed on Schedule 7(a) (employees who accept such offers of employment from Buyer are referred to herein as "*Transferred Employees*") on terms and conditions which offers shall provide for compensation and benefits substantially similar to the compensation and benefits provided by Seller to such employee (as listed on Schedule A), or (ii) agree to assume Seller's agreement with TriNet HR Corporation dated February 25, 2016.

(b) Except for the Transferred Employees, no person who is or who has been an employee of Seller shall transfer employment to Buyer in connection with Buyer's purchase of the Acquired Assets pursuant to this Agreement. Except in relation to the Transferred Employees after the Closing Date, Seller shall retain the sole responsibility for all matters relating to the maintenance of personnel and payroll records, the withholding and payment of federal, state and local income and payroll taxes, the payment of workers' compensation and unemployment compensation insurance, salaries, wages and pension, welfare and other fringe benefits, including any severance and/or pay-out of accrued vacation pay which may be triggered as a result of any termination of employment (including all severance and vacation pay Liabilities incurred on or prior to the Closing Date) and the conduct of all other matters relating to labor relations. Seller shall retain Liability for compliance with all applicable labor and employment Laws relating to the Employees in connection with their employment by Seller, and Seller shall indemnify Buyer (and its successors, assigns, officers, directors and employees) for any Liability or legal or other expenses that result from any legal action alleging noncompliance with such Laws.

8. COVENANTS.

(a) General. Subject to Section 9 and the procedures set forth in the Bid Procedures Order, each of the Parties shall use its commercially reasonable efforts to take all actions and do all things reasonably necessary, proper or advisable in order to consummate and make effective the transactions contemplated by this Agreement, including satisfaction, but not waiver, of the closing conditions set forth in Section 10, below.

(b) Operation of Business.

(i) Except as otherwise contemplated by this Agreement, and except as required by the Court, during the period from the Execution Date until the Closing Date, Seller shall not engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business, except that subject to Section 9, Seller may take actions to sell its assets other than the Acquired Assets or to settle or resolve its Liabilities or assign its Liabilities other than Assumed Liabilities. Seller shall (A) operate the Business in the Ordinary Course of Business; (B) other than as expressly contemplated by this Agreement or otherwise permitted in writing by Buyer, preserve the Business; (C) endeavor to preserve the goodwill and relationships with customers, suppliers and others having business dealings with the Business, in each case, taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code; and (D) pay, on a current basis, any Liabilities pursuant to any Seller's Agreements that are not Rejected Agreements.

(ii) Prior to Closing, without the prior written consent of Buyer, Seller shall not (A) terminate, extend or otherwise amend any licenses with the FCC; (B) other than Permitted Encumbrances, create, incur, assume or suffer to exist any Lien upon the Acquired Assets; (C) cause to increase or accelerate any of the Assumed Liabilities; or (D) sell, lease (as lessor), transfer or otherwise dispose of, any of the Acquired Assets, in each case, other than in the Ordinary Course of Business.

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(iii) Prior to Closing, Seller shall continue all activities necessary to preserve and maintain in full force and effect all of its Governmental Permits.

(c) Reasonable Access. Until the end of the Transition Period, Seller shall use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to permit representatives of Buyer to have access, at all reasonable times and in a manner so as not to interfere with the normal business operations of Seller, to all premises, properties, personnel, Books and Records, contracts, and documents of or pertaining to Seller related to the Business, the Seller's Agreements, the Acquired Assets and the Assumed Liabilities.

(d) Notice of Developments. At any time prior to Closing, Seller shall provide Buyer prompt, due and sufficient notice of (i) material developments relating to the Business, including any development causing a breach of any of their representations and warranties hereunder; (ii) the occurrence, or failure to occur, of any event which occurrence or failure to occur would cause any representation or warranty contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date; and (iii) any failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. In addition, Seller shall, prior to Closing, supplement the Disclosure Schedules hereto with respect to any matters that, if existing or known as of the date hereof, would have been required to have been set forth or described in the Disclosure Schedules. Any such supplemental disclosure shall not be deemed to cure any breach of any representation or warranty made herein as of the date hereof, nor shall it be deemed to have been disclosed to Buyer as of the date hereof for the purposes of determining whether or not Buyer has any further obligation to consummate the transactions contemplated hereby.

(e) Post-Closing Access to Records. For a period of three (3) years after the Closing Date, each Party and its representatives shall have reasonable access to all Books and Records relating to the Business or the Acquired Assets, including, without limitation, all information pertaining to the Assumed Agreements, all Transferred Employee records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such party in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Business and the Acquired Assets. Such access shall be afforded by the party in possession of such Books and Records upon receipt of reasonable advance notice and during normal business hours; *provided, however*, that (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any party or its Affiliates, (ii) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege, and (iii) no Party need supply the other Party with any information which such Party is under a legal obligation not to supply. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 8(e).

(f) Further Actions.

(i) Seller and Buyer agree to use commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the Closing Date.

(ii) Seller and Buyer shall, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by any of them pursuant to applicable Law in connection with this Agreement and the Transaction Documents, the sale and transfer of the Acquired Assets pursuant to this Agreement and the consummation of the other transactions contemplated thereby.

(iii) Seller and Buyer, as promptly as practicable, shall use all commercially reasonable efforts to obtain, or cause to be obtained, all material consents (including consents to assignment of Governmental Permits and any consents required under any Seller's Agreement) necessary to be obtained by any of them in order to consummate the sale and transfer of the Acquired Assets pursuant to this Agreement.

(iv) Seller and Buyer shall, and shall cause each of their respective Affiliates to, coordinate and cooperate with each of the other parties in exchanging such information and supplying such assistance as may be reasonably requested by Seller or Buyer in connection with the filings and other actions contemplated by this Section 8(f).

(v) At all times prior to the Closing, each Party shall promptly notify the other in writing of any fact, condition, event or occurrence that will or may likely result in the failure of any of the conditions contained in Section 10 to be satisfied, promptly upon becoming aware of the same.

(g) Confidentiality.

(i) Seller possesses and will possess following the Closing business information relating to Buyer, the Acquired Assets, the Assumed Liabilities and the Business, all of which shall be deemed to constitute confidential and proprietary information (the "**Proprietary Information**"). Seller agrees that for a period of three (3) years following the Closing, Seller will maintain the confidentiality of all Proprietary Information and will not use, or disclose to any other party, for any purpose whatsoever, any Proprietary Information relating to the Acquired Assets or the Business, except to authorized representatives of Seller and to counsel and other advisors, including its auditors, provided that such advisors (other than counsel) agree to the confidentiality provisions of this Section 8(g)), unless (A) such information becomes known to the public generally through no fault of Seller, (B) disclosure is required by Law or the order of any Governmental Authority under color of Law, or (C) Seller reasonably believes that such disclosure is required in connection with the defense of a lawsuit or for certification or state licensure purposes; *provided*, that prior to disclosing any information pursuant to clauses (A), (B) or (C) above, Seller shall, if possible, give prior written notice thereof to Buyer, and provide Buyer with the opportunity to contest such disclosure. Further, Seller acknowledges the critical importance of maintaining the Proprietary Information as confidential and agrees that because any award of monetary damages would be inadequate for

any breach of this covenant and would cause prior irreparable harm to Buyer, that in the event of any breach or threatened breach of this covenant Buyer will be entitled to equitable relief, including injunctive relief and specific performance. Such remedy shall not be the exclusive remedy for any breach of this covenant but will be in addition to all other remedies available at law or equity.

(ii) Buyer agrees that prior to the Closing and, in the event that Buyer is not the successful bidder, after the termination of this Agreement, it will not disclose for a period of three (3) years following the Closing, Proprietary Information with respect to Seller, the Acquired Assets, the Assumed Liabilities or the Business, for any purpose or reason whatsoever (except to authorized representatives of Buyer and to counsel and other advisors, including its auditors, provided that such advisors (other than counsel) agree to the confidentiality provisions of this Section 8(g)), unless (A) such information becomes known to the public generally through no fault of Buyer, (B) disclosure is required by Law or the order of any Governmental Authority under color of Law, or (C) Buyer reasonably believes that such disclosure is required in connection with the defense of a lawsuit or for certification or state licensure purposes; *provided*, that prior to disclosing any information pursuant to clauses (A), (B) or (C) above, Buyer shall, if possible, give prior written notice thereof to Seller, and provide Seller with the opportunity to contest such disclosure. Further, Buyer acknowledges the critical importance of maintaining the Proprietary Information as confidential and agrees that because any award of monetary damages would be inadequate for any breach of this covenant and would cause prior irreparable harm to Seller, that in the event of any breach or threatened breach of this covenant, Seller will be entitled to equitable relief, including injunctive relief and specific performance. Such remedy shall not be the exclusive remedy for any breach of this covenant but will be in addition to all other remedies available at law or equity.

(h) Non-Competition. Seller shall enter into a Non-Competition Agreement with Buyer substantially in the form attached hereto as **Exhibit F**.

(i) Cure. Seller shall cure any defaults under the Assumed Agreements (excluding the Cure Amounts to be paid by Buyer) on or prior to the Closing Date.

(j) Notification. Seller shall notify Buyer and keep it advised of the occurrence of (i) any litigation or administrative proceeding pending or threatened against Seller and (ii) any material damage or destruction of any of the Acquired Assets.

(k) Post-Closing Access to Books and Records. For a period of three (3) years after the Closing Date, Seller, Buyer and their representatives shall have reasonable access to, and each shall have the right to photocopy at their own expense, all of the Books and Records relating to the pre-Closing operations of Seller and/or the Acquired Assets as they existed as of the Closing Date, including but not limited to (i) the investigation, evaluation and prosecution of any and all causes of action retained by Seller, (ii) the evaluation and defense of any and all claims brought against the estate of Seller and (iii) all Transferred Employees' records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such party in connection with the Assumed Liabilities and Excluded Liabilities, or other matters relating to or affected by the operation of the Business or use of the Acquired Assets; provided,

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however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any Party, (B) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege or which would require the disclosure of confidential information and (C) no Party shall be required to supply information which such party is under a legal obligation not to supply. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 8(k). If the party in possession of such Books and Records shall desire to dispose of any such Books and Records upon or prior to the expiration of such period, such party shall, prior to such disposition, give the other party a reasonable opportunity at such other party's expense, to segregate and remove such Books and Records as such other party may select.

9. BANKRUPTCY COURT APPROVAL.

(a) As soon as practicable, but in any event within five (5) business days after the Execution Date, Seller shall file and serve motions (the "**Motions**") pursuant to Bankruptcy Code Sections 105, 363, 365 and 1146, as applicable, in a form reasonably approved by counsel for Buyer:

(i) seeking entry of an order, on an expedited basis, substantially in the form attached hereto as Exhibit G (the "**Bid Procedures Order**"), among other things (A) approving the reimbursement of Buyer's out of pocket expenses (the "**Expense Reimbursement**") as administrative priority claims under Bankruptcy Code Sections 503(b) and 507(a), not to exceed \$150,000, which administrative claim shall automatically be deemed to be expunged, and shall not be paid or due to be paid from the \$600,000 purchase price, or from any monies received by Seller from the sale, unless the Court directs or otherwise orders that the sale be made to another higher or better offer made by a Qualified Bidder and Buyer is not the successful bidder herein; (B) approving the procedures for the sale of the Acquired Assets, including the requirement of an overbid amount of \$150,000 plus the Expense Reimbursement over the Purchase Price for bidders other than Buyer (the "**Overbid Amount Requirement**"), an incremental bid amount of \$50,000 (the "**Incremental Bid Amount**") and matching bid provisions, *provided that* any incremental bids made by Buyer shall be exempt from the Overbid Amount Requirement, so long as such incremental bid made by Buyer is at least \$5,000.00 more than any other offers made by any other Qualified Bidders; (C) setting dates for the auction sale of the Acquired Assets no later than January 31, 2017 (the "**Auction**"), and the hearing on the sale of the Acquired Assets no later than January 31, 2017; (D) providing that for any Person other than Buyer to be considered a qualifying bidder ("**Qualifying Bidder**"), such Person shall provide sufficient evidence to Seller of its financial ability to consummate a closing of the transactions contemplated hereby and such Person's bid shall (1) at a minimum, meet the Overbid Amount Requirement plus any applicable Incremental Bid Amount(s), (2) not be conditioned on the outcome of such bidder's due diligence with respect to the Acquired Assets that is not completed within three (3) days before the Auction, (3) not be conditioned on such bidder's ability to obtain financing, (4) provide as good as or better terms as contained in this Agreement, (5) be accompanied by a good faith deposit of \$175,000.00 in cash or certified or cashier's check payable to Seller, and (5) be in the form of this Agreement with any proposed changes to be redlined; and (E) providing that if Buyer is not the successful bidder at the Auction and Seller fails to consummate a closing with a Qualifying Bidder thereafter, Seller

shall give Buyer written notice ten (10) Business Days prior to decommissioning the Business or any material portion of Seller's network in order to allow Buyer and Seller to negotiate a purchase price and consummate a closing of the sale of the Acquired Assets and Business.

(ii) seeking entry of an order substantially in the form attached hereto as **Exhibit H** (the "**Sale Order**"), which, among other things, (A) authorizes Seller to sell, transfer and assign the Acquired Assets to Buyer pursuant to this Agreement and Bankruptcy Code Sections 105, 363, 365 and 1146, as applicable, free and clear of all Liens and Claims, except for Permitted Encumbrances; (B) determines that Buyer is a good faith purchaser under Section 363(m) of the Bankruptcy Code and that Buyer has acted in good faith, is a bona fide purchaser for value, and that the Purchase Price is fair and reasonable; (C) provides that the Assumed Agreements are assigned to Buyer pursuant to 11 U.S.C. § 365, that Buyer assumes no Liabilities for Claims or Cure Amounts under the Assumed Agreements except as specifically provided herein and that all Assumed Agreements are enforceable against the nondebtor parties; (D) pursuant to which Seller assumes any obligation to cure any unpaid obligations in respect to the Assumed Agreements listed on the Schedule of Assumed Agreements for the period between the Filing Date and Closing, at or before Closing; (E) provides that Section 1146(c) applies to the sale; and (F) is in all respects in a form acceptable to counsel for Buyer; and (vii) provides that the fourteen (14) day periods provided for in Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) are waived.

(b) Seller confirms that its negotiation of this Agreement with Buyer is critical to obtaining the highest and best price for their assets, and that without Buyer's commitment of substantial time and expense to the process, Seller would have to employ a less orderly process for the sale of its assets and therefore risk attracting lower prices. Seller acknowledges that Buyer would not have invested the time and incurred the expense of negotiating and documenting the transaction if it were not entitled to the Expense Reimbursement.

(c) Promptly after the filing of the Motions, Seller shall use best efforts to obtain a hearing thereon at the earliest available date after expiration of the applicable notice period. After filing the Motions, Seller shall not (without prior written consent of Buyer which consent shall not be unreasonably withheld) amend, modify or withdraw the Motions. Seller shall use best efforts to obtain, promptly, entry of a Sale Order, and Seller shall take all necessary actions in connection therewith. Seller shall provide due and sufficient notice of the hearing to be held in the Court regarding the Motions to: (i) each person or entity that has filed a notice of appearance, or that has otherwise filed a written request to receive copies of pleadings, in the Bankruptcy Case, (ii) the Internal Revenue Service, (iii) the Office of the United States Trustee, (iv) the taxing authorities for the State of New York and any appropriate political subdivisions of any thereof, (v) counsel to any official committee of creditors in the Bankruptcy Case, (vi) Buyer and its counsel, (vii) each party (other than Seller) to each Assumed Agreement, (viii) each person or entity that has asserted a Lien on, or in, any of the Acquired Assets, and (ix) Buyer and any other person or entity that Buyer reasonably requests in writing be served.

10. CONDITIONS TO CLOSING.

(a) Conditions to Obligation of Buyer. The obligation of Buyer to pay the Purchase Price and consummate the transactions to be performed by it in connection with Closing is subject to satisfaction, or waiver by Buyer at its sole discretion, of the following conditions:

(i) The representations and warranties of Seller set forth in Section 5 above shall be true and correct in all material respects at and as of the Closing Date, and the representations and warranties of Buyer set forth in Section 6 above shall be true and correct in all material respects at and as of the Closing Date;

(ii) The Sale Order, in all respects in a form reasonably acceptable to counsel for Buyer, has been entered by the Bankruptcy Court and shall have become a Final Order, unless the Sale Order expressly authorizes the sale and assignments before the expiration of 14 days after entry of the order under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d).

(iii) Seller shall have performed and complied with all of their covenants hereunder in all material respects through Closing;

(iv) There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement through Closing;

(v) Seller shall have delivered to Buyer all of Seller's Closing Documents, duly executed by Seller as applicable on or before the Closing Date;

(vi) All material actions, consents or approvals required to be obtained in connection with the consummation of the transactions contemplated by this Agreement or by the Transaction Documents, including without limitation from Governmental Authorities, shall have been obtained (copies of which shall have been delivered to Buyer) and be in full force and effect;

(vii) Seller shall continue to be a going concern as of the Closing Date;

(viii) All equipment material to the Business shall be in good working order;

(ix) The Board of Directors of Buyer shall have approved this Agreement on or prior to the hearing by the Court regarding the Motions;

(x) Each of Mark DuMoulin, Sr., Susan B. DuMoulin, Mark DuMoulin II, and Michael DuMoulin shall have entered into employment agreements with Buyer in substantially the form attached hereto as Exhibit I;

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(xi) Each of Seller and Hudson Owners, LLC ("**Hudson**") shall have executed and delivered a release of all claims against the other, such release to be in form and substance satisfactory to Buyer;

(xii) Hudson shall have executed and delivered to Buyer an amendment to the lease agreement between Seller and Hudson, which amendment shall provide for lease terms acceptable to Buyer, with such amendment to become effective upon Buyer's assumption of the lease;

(xiii) Buyer and N Plus shall have entered into an agreement whereby Buyer shall purchase, and N Plus shall assign to Buyer, all of N Plus's rights under that certain Colocation Agreement by and between N Plus and Deutsche Telekom North America Inc. which Colocation Agreement will then be terminated and replaced by a new Colocation Agreement between the Buyer and Deutsche Telekom North America;

(xiv) NFS shall have executed and delivered an agreement to terminate the equipment lease agreement between Seller and NFS, any UCC financing statements, and any other security interest in the Acquired Assets, in form and substance acceptable to Buyer; and

(xv) All circuit information, customer records, demarcation points and all other information necessary to the continued operation of the Seller's transport and colocation businesses shall have been transferred to Buyer.

(b) Conditions to Obligation of Seller. The obligation of Seller to consummate the transactions to be performed by it in connection with Closing is subject to satisfaction of the following conditions:

(i) The representations and warranties of Buyer set forth in Section 6 above shall be true and correct in all material respects at and as of the Closing Date;

(ii) The Sale Order, in all respects in a form reasonably acceptable to counsel for Seller, has been entered by the Bankruptcy Court and shall have become a Final Order, unless the Sale Order expressly authorizes the sale and assignments before the expiration of 14 days after entry of the order under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d);

(iii) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through Closing;

(iv) Buyer shall have delivered to NFS such amount as required pursuant to that termination of equipment lease agreement referenced in Section 10(a)(xiv) hereof such that any Lien of NFS on any Acquired Asset shall be released as of Closing;

(v) There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement;

(vi) Buyer shall have delivered to Seller all of Buyer's Closing Documents, duly executed by Buyer as applicable;

(vii) Each of Mark DuMoulin, Sr., Susan B. DuMoulin, Mark DuMoulin II, and Michael DuMoulin shall have been offered employment agreements with Buyer in substantially the form attached hereto as Exhibit I; and

(viii) All actions, consents or approvals required to be obtained from Governmental Authorities in connection with the consummation of the transactions contemplated by this Agreement or by the Transaction Documents shall have been obtained (copies of which shall have been delivered to Seller) and be in full force and effect, including the Sale Order from the Court (*provided that* the Sale Order states that it shall not be subject to any stay).

11. TERMINATION.

The parties may terminate this Agreement as provided below.

(a) At any time before the consummation and completion of the Closing, this Agreement may be terminated (i) by mutual written agreement of the parties hereto; (ii) by Buyer if (A) Closing has not occurred on or before January 31, 2017, or (B) any other condition set forth in Section 10 has become incapable of fulfillment or has not been satisfied on or before January 31, 2017; (iii) by Seller or Buyer if a bid or bids for the Acquired Assets by a purchaser other than Buyer is approved by the Court; (iv) by Buyer in the event of any material breach by Seller of any of Seller's agreements, representations or warranties contained herein; or (v) by Seller in the event of any material breach by Buyer of any of its agreements, representations or warranties contained herein.

(b) Effect of Termination. If this Agreement is terminated pursuant to clause (i) of paragraph (a), all obligations of the Parties shall terminate without liability of any party to the other. If the Agreement is terminated pursuant to clauses (ii) or (iv) of paragraph (a), Buyer shall be entitled to the return of the Security Deposit and such termination is without prejudice to any other rights Buyer may have with respect to any breach of any representation, warranty or covenant by Seller. If the Agreement is terminated pursuant to clause (iii) of paragraph (a), Buyer shall be entitled to the Expense Reimbursement and the return of the Security Deposit with accrued interest thereon (if the Security Deposit has been maintained in an interest-bearing account) and Buyer shall have no further liability whatsoever. If the Agreement is terminated pursuant to clause (v) of paragraph (a), Buyer shall forfeit the Security Deposit, which will become property of the Seller, Buyer shall not be entitled to the Expense Reimbursement, and Buyer's administrative claim for the Expense Reimbursement shall automatically be deemed to be expunged in its entirety.

(c) Notwithstanding the provisions of paragraph (a), if any of the conditions to Buyer's obligation to close are not satisfied, Buyer has the right to waive the unsatisfied conditions and proceed with the Closing, without prejudice to any rights Buyer may have with respect to any breach of representation, warranty or covenant by Seller.

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12. MISCELLANEOUS.

(a) Survival of Representations and Warranties. The representations and warranties of the parties contained herein and in any of the other Transaction Documents shall survive until the end of the Transition Period.

(b) Transfer Taxes. Any federal, state, provincial or local transfer Taxes, including gains, transfer, conveyance, sales, documentary stamp and similar Taxes, payable as a result of the purchase and sale of the Acquired Assets, the assignment of Assumed Agreements or any other action contemplated by this Agreement shall be divided equally between Buyer and Seller, with each of Buyer and Seller paying fifty percent (50%) of any such Taxes. Buyer and Seller will cooperate in the preparation, execution and filing of all Tax Returns, questionnaires, applications or other like documents regarding any such Taxes.

(c) Expenses and Fees. Each party shall pay its own costs and expenses incident to the preparation and negotiation of this Agreement and the Transaction Documents, the consummation of the transactions contemplated hereby and thereby and its compliance with all its agreements and conditions contained herein or therein, including all legal and accounting fees and disbursements and all costs of obtaining necessary consents.

(d) Waiver. No terms or provisions hereof, including the terms and provisions contained in this sentence, shall be waived, modified or altered so as to impose any additional obligations or liability or grant any additional right or remedy, and no custom, payment, act, knowledge, extension of time, favor or indulgence, gratuitous or otherwise, or words or silence at any time, shall impose any additional obligation or liability or grant any additional right or remedy or be deemed a waiver or release of any obligation, liability, right or remedy except as set forth in a written instrument properly executed and delivered by the Party sought to be charged, expressly stating that it is, and the extent to which it is, intended to be so effective. No assent, express or implied, by either Party, or waiver by either Party, to or of any breach of any term or provision of this Agreement or of the Schedules shall be deemed to be an assent or waiver to or of such or any succeeding breach of the same or any other such term or provision.

(e) Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement prior to entry of a Sale Order without the prior written approval of the other Party; *provided, however,* that any Party may make any public disclosure it believes in good faith is required by applicable Law.

(f) No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the parties and their respective successors and permitted assigns.

(g) Entire Agreement; Amendment. This Agreement, the Exhibits and Schedules referred to herein and the Transaction Documents contain the entire understanding of the parties with respect to the subject matter contained herein or therein and supersede in their entirety all prior or concurrent oral or written agreements, offers, proposals and understandings

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between the parties with respect to such subject matter. This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties; *provided, however*, that this Agreement may not be amended in any material manner after entry of a Sale Order without Court approval.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party; *provided, however*, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more Persons ("**Permitted Designees**") and (ii) designate one or more Permitted Designees to perform its obligations hereunder, in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder. In no event shall a Permitted Designee be an insider or Affiliate (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of the Seller or of any creditors of the Seller, or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the Seller, subleasing space from the Seller, or had any agreements (whether written or oral) with the Seller or any of the Seller's creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the Seller to obtain the Court's approval of this Agreement or to consummate the transactions contemplated by and under this Agreement.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(j) Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(k) Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given with respect to this Agreement shall be in writing and shall be delivered (charges prepaid, receipt confirmed or return receipt requested (if available)) by hand, by internationally and nationally recognized air courier service, or by registered, certified or express mail, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Notice shall be deemed given and effective (i) if delivered by hand or by internationally or nationally recognized air courier service when so delivered, or (ii) if sent by registered, certified or express mail, on the date of receipt (or on the date of attempted delivery if delivery is refused). Delivery by facsimile transmission or electronic mail shall not constitute notice under this Agreement.

If to Buyer:

Epsilon US, Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741

Attn: Jerzy Szlosarek

with a copy (which shall not constitute notice) in all events to:

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Attn: Andrew M. Ray, Esq.
Andrew J. Gallo, Esq.

If to Seller:

Metcom Network Services, Inc.
4250 Veterans Memorial Highway
Suite 3150 West
Holbrook, NY 11741
Attn: Mark DuMoulin, Sr.
Susan B. DuMoulin

with copies by email (which shall not constitute notice) in all events to:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attn: Neil Ackerman and Kamini Fox, Esq.
nackerman@ackermanfox.com
kfox@ackermanfox.com

Each Party may designate by notice in writing a new or additional address to which any notice, request, demand or communication may thereafter be so given, served or sent. Notices, requests, demands and other communications hereunder may be given by the attorney of any Party.

(l) Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF EXCEPT WHERE THE BANKRUPTCY CODE REQUIRES OTHERWISE. FOR THE DURATION OF THE PERIODS IN WHICH SELLER IS A DEBTOR OR DEBTOR-IN-POSSESSION IN THE BANKRUPTCY CASE, THE COURT WILL HAVE EXCLUSIVE JURISDICTION OVER ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND EACH PARTY AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH ACTION, SUIT OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER OR THAT THIS

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AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT. EACH PARTY FURTHER IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH ACTION, SUIT OR PROCEEDING.

(m) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction; *provided, however*, that the Parties may agree to either terminate or amend this Agreement as necessary should such invalid or unenforceable term or provision be essential to the consummation of the transactions contemplated by this Agreement.

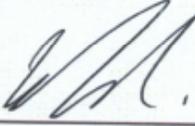
(n) Incorporation of Exhibits and Schedules. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

EPSILON US INC.

By: 
Name: JERRY SLOSAREK
Title: CEO

METCOM NETWORK SERVICES, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

EPSILON US INC.

By: _____
Name:
Title:

METCOM NETWORK SERVICES, INC.

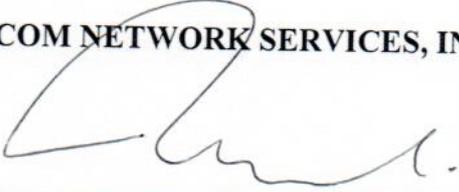
By: 
Name: *Mark Dumoulin*
Title: *President*

EXHIBIT A

Bill of Sale, Assignment and Assumption Agreement

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Bill of Sale") is made as of January __, 2017 by and between Epsilon US Inc., a Delaware corporation ("Buyer") and Metcom Network Services, Inc., a New York corporation ("Seller") and, together with Buyer, the "Parties"). Unless otherwise defined herein, capitalized terms are used herein as defined in the Asset Purchase Agreement, dated as of January 10, 2017, by and between Seller and Buyer (the "Asset Purchase Agreement").

WHEREAS, pursuant to the Asset Purchase Agreement, Buyer has agreed to purchase the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller has agreed to sell the Acquired Assets and transfer the Assumed Liabilities to Buyer; and), and Buyer's bid for the Acquired Assets was approved by Bankruptcy Court Order dated January __, 2017, after notice and hearing; and

WHEREAS, Seller is executing and delivering this Bill of Sale for the purpose of conveying, selling, transferring, assigning and delivering to Buyer all of Seller's right, title, and interest in and to the Acquired Assets, and Buyer is executing and delivering this Bill of Sale in order to confirm to Seller the assumption by Buyer of the Assumed Liabilities.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the Asset Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Seller hereby grants, sells, conveys, assigns, transfers and delivers to Buyer free and clear of all Liens (other than Permitted Encumbrances) Seller's right, title, and interest in and to the Acquired Assets.
2. Buyer hereby assumes and shall hereafter perform, pay, and discharge the Assumed Liabilities, when due.
3. Except as set forth in the Asset Purchase Agreement, nothing in this Bill of Sale shall confer any rights upon any person other than the Parties and their respective successors and permitted assigns.
4. Neither the making nor the acceptance of this Bill of Sale shall enlarge, restrict, or otherwise modify the terms of the Asset Purchase Agreement or constitute a waiver or release by Seller or Buyer of any liabilities, duties, or obligations imposed upon either of them by the terms of the Asset Purchase Agreement.
5. This Bill of Sale shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.
6. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of laws principles thereof except where the Bankruptcy Code requires otherwise. For the duration of the periods in which Seller is a

debtor or debtor-in-possession in the Bankruptcy Case, the Court will have exclusive jurisdiction over any disputes arising out of or relating to this Bill of Sale, and each Party agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit or proceeding, any claim that it is not personally subject to the jurisdiction of such Court in an inconvenient forum, that the venue of the action, suit or proceeding is improper or that this Bill of Sale or the subject matter hereof may not be enforced in or by such Court. Each party further irrevocably submits to the jurisdiction of any such Court in any such action, suit or proceeding.

* * * * *

IN WITNESS WHEREOF, this Bill of Sale has been signed by each of the Parties hereto
on the date first written above.

SELLER:

METCOM NETWORK SERVICES, INC.

By:_____

Name:

Title:

BUYER:

EPSILON US INC.

By:_____

Name:

Title:

EXHIBIT B

Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “**Escrow Agreement**”), is entered into as of January , 2017, by and among Epsilon US Inc., a Delaware corporation (“**Buyer**”), Metcom Network Services, Inc., a New York corporation (“**Seller**”), and Ackerman Fox, LLP, a Law Firm, as escrow agent (the “**Escrow Agent**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement (as defined below).

RECITALS

A. Buyer has delivered an executed Asset Purchase Agreement, dated as of or around the date hereof (the “**Agreement**”).

B. The Bid Procedures Order and Section 3(a) of the Agreement requires the Buyer to deposit with the Escrow Agent an amount equal to \$131,000 (the “**Deposit**”), such funds (the “**Escrow Funds**”) to be held and disbursed by the Escrow Agent in accordance with the terms of this Escrow Agreement.

C. Schedule I to this Escrow Agreement sets forth the wire transfer instructions of Buyer and Seller.¹

AGREEMENT

In consideration of the mutual covenants of the parties hereto set forth in this Escrow Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Agent. Seller and Buyer hereby appoint and designate the Escrow Agent as escrow agent for the purposes set forth herein and the Escrow Agent hereby accepts such appointment and agrees to accept, hold and disburse the Escrow Funds in accordance with the terms hereof. All references to the “**Escrow Agent**,” as that term is used herein, shall refer to the Escrow Agent solely in its capacity as such, and not in any other capacity whatsoever, whether as individual, agent, fiduciary, trustee or otherwise. The Escrow Agent shall have no obligation to assure or participate in the enforcement or performance of the Agreement whether or not the Escrow Agent shall have knowledge or notice of the terms thereof, or any acts or omissions relating thereto.

2. Deposit of Escrow Amount. Pursuant to the terms of the Bid Procedures Order, on the date hereof, Buyer hereby deposits with the Escrow Agent, by wire transfer of immediately available funds, and the Escrow Agent hereby acknowledges receipt of, the Deposit, to be held and disbursed by the Escrow Agent as set forth herein. Subject to the provisions of **Section 3**, the Escrow Funds shall be deposited by the Escrow Agent into the Metcom/Epsilon Sale Escrow Account (the “**Escrow Account**”) maintained by the Escrow Agent and shall be

¹ WIRE TRANSFER INSTRUCTIONS TO BE PROVIDED ASAP; IT WILL BE A SEPARATE “SUB-ESCROW” ACCOUNT ATTACHED TO ACKERMAN FOX, LLP’S MAIN ESCROW ACCOUNT AT CITIBANK, N.A. IN EAST MEADOW, NY.

maintained in such Escrow Account until the distribution of the Escrow Funds in accordance with the terms hereof.

3. Investment of Escrow Funds. The parties agree that the Escrow Funds will not be deposited into an interest-bearing account and shall not accrue any interest. The Escrow Agent may invest and reinvest the Escrow Funds from time to time only if directed in writing jointly by both Buyer and Seller. If no such joint written instructions are received, the Escrow Funds will remain uninvested and therefore shall not earn interest. The Escrow Agent shall have no authority to invest the Escrow Funds in any other obligations or investments except as provided in this **Section 3**. Neither Buyer, on the one hand, nor Seller, on the other hand, makes any express or implied representation or warranty with respect to any insurance of any amounts on deposit in the Escrow Funds.

(a) The parties hereto recognize and agree that the Escrow Agent will not provide supervision, recommendations, or advice relating to either the investment of moneys held in the Escrow Account or the purchase, sale, retention, or other disposition of any permitted investment.

(b) The Escrow Agent is hereby authorized to execute purchases and sales of permitted investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent shall send statements to each of the parties hereto on a monthly basis reflecting activity in the Escrow Account for the preceding month. Although each of the parties hereto recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the parties hereto hereby agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for the Escrow Account if no activity occurred for such month.

(c) The parties hereto acknowledge and agree that the delivery of the Escrow Funds is subject to the sale and final settlement of permitted investments. Proceeds of a sale of permitted investments will be delivered on the business day on which the appropriate instructions are delivered to the Escrow Agent if received prior to the deadline for same day sale of such permitted investments. If such instructions are received after the applicable deadline, proceeds will be delivered on the next succeeding business day.

4. Tax Matters.

(a) Reporting of Income. Buyer and Seller agree that, for Tax reporting purposes, all Taxable interest on or other income, if any, attributable to the Escrow Funds shall be allocable to Buyer.

(b) Preparation and Filing of Tax Returns. Any tax returns required to be prepared and filed will be prepared and filed by Buyer with the Internal Revenue Service in all years income is earned, whether or not income is received or distributed in any particular tax year, and the Escrow Agent shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned by the Escrow Account.

(c) Payment of Taxes. Any taxes payable on income earned from the investment of any sums held in the Escrow Account shall be paid by Buyer, whether or not the income was distributed by the Escrow Agent during any particular year and to the extent required under the provisions of the Internal Revenue Code of 1986 (the “**Code**”).

(d) Unrelated Transactions. The Escrow Agent shall have no responsibility for the preparation and/or filing of any tax information return with respect to any transaction, whether or not related to this Escrow Agreement, that occurs outside the Escrow Funds.

5. Distributions and Payments.

(a) The Escrow Agent shall retain the Escrow Funds in the Escrow Account until it is presented with a joint written instruction executed by Seller and Buyer (a “**Joint Written Instruction**”) or a written order of the Bankruptcy Court or the United States District Court for the Southern District of New York, as applicable, directing any disbursement of the Escrow Funds to Seller and/or Buyer, or after a Closing of the sale to Buyer under an Order issued by the Bankruptcy Court, into a separate escrow account for Seller’s Bankruptcy Estate, or as otherwise directed by the Bankruptcy Court (a “**Court Order**”). The Escrow Agent shall receive and may conclusively rely upon an opinion of counsel to the effect that such Court Order is final, non appealable and from a court of competent jurisdiction. Upon receipt of such instructions or order, the Escrow Agent shall disburse the amount of the Escrow Funds specified in such notice or order by wire transfer of immediately available funds as directed in such notice or order. There may be more than one such notice.

(b) Other than pursuant to the terms expressly set forth herein, the Escrow Agent shall make such distributions from the Escrow Funds to Seller or Buyer only as shall be specified in a Joint Written Instruction delivered to the Escrow Agent.

(c) Any distribution required to be made by the Escrow Agent under this Escrow Agreement shall be made by the Escrow Agent promptly upon liquidation of any investment required for such distribution.

6. Rights, Obligations and Indemnification of the Escrow Agent.

(a) In performing any of its duties under this Escrow Agreement, or upon the claimed failure to perform its duties hereunder, the Escrow Agent shall not be liable to anyone for any damages, losses, or expenses that such party may incur as a result of the Escrow Agent so acting or failing to act; provided that the Escrow Agent shall be liable for damages arising out of its fraud, gross negligence, or willful misconduct under this Escrow Agreement. Accordingly, the Escrow Agent shall not incur any such liability with respect to: (i) any action taken or omitted to be taken in good faith and without fraud, gross negligence, or willful misconduct; or (ii) any action taken or omitted to be taken in reliance (including reliance not only as to a document’s due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein) upon any document, including any written notice, request or instruction provided for in this Escrow Agreement, that the Escrow

Agent shall in good faith believe to be genuine without inquiry and without requiring substantiating evidence of any kind, to have been signed or presented by a proper Person or Persons and to conform with the provisions of this Escrow Agreement. Concurrently with the execution of this Escrow Agreement, Buyer and Seller shall deliver to the Escrow Agent **Exhibit A-1** and **Exhibit A-2** which contain an authorized signer designation in Part A thereof. The Escrow Agent shall have no liability for loss arising from any cause beyond its control, including, but not limited to, the following: (x) the act, failure or neglect of any agent or correspondent selected by Seller or Buyer for the remittance of funds; (y) any delay, error, omission or default of any communication by any Person other than the Escrow Agent; or (z) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers.

(b) Buyer, on the one hand, and Seller, on the other hand, each hereby agree to indemnify and hold the Escrow Agent and its parent, affiliates, directors, officers, agents and employees (collectively, the “**Escrow Agent Indemnitees**”) harmless from and against one-half (½) of any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket, incidental expenses and reasonable legal fees and expenses (collectively, “**Losses**”) that may be imposed on, incurred by, or asserted against, the Escrow Agent Indemnitees or any of them for following any instruction or other direction upon which the Escrow Agent is authorized to rely pursuant to the terms of this Escrow Agreement; provided that the Escrow Agent has not acted with gross negligence or engaged in fraud or willful misconduct. In addition to and not in limitation of the immediately preceding sentence, Buyer, on the one hand, and Seller, on the other hand, each hereby also covenant and agree to indemnify and hold the Escrow Agent Indemnitees and each of them harmless from and against one-half (½) of all Losses that may be imposed on, incurred by, or asserted against the Escrow Agent Indemnitees or any of them in connection with or arising out of the Escrow Agent’s performance under this Escrow Agreement (including any action taken by the Escrow Agent in accordance with **Section 6(i)**); provided, however, that such indemnity shall not apply to any Losses finally adjudicated to have been directly caused by the Escrow Agent’s fraud, gross negligence or willful misconduct. The provisions of this **Section 6(b)** shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent for any reason.

(c) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document between the other parties hereto, in connection herewith, including, without limitation, the Agreement. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES THAT HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT’S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (II) ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL

LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(d) If any part of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or if the payment or transfer of any such funds shall be stayed or enjoined by any court order, or any order, judgment, or decree shall be made or entered by any court affecting such funds or any portion thereof, then in any of such events, the Escrow Agent (i) shall provide Buyer and Seller with prompt written notice of any such events and (ii) is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel is binding upon it. If the Escrow Agent complies with the preceding sentence and any such order, writ, judgment, or decree, it shall not be liable to Buyer, Seller or any other Person by reason of such compliance, even though such order, writ, judgment, or decree may subsequently be reversed, modified, annulled, set aside, or vacated.

(e) Except as specifically provided in **Section 3** of this Escrow Agreement, the Escrow Agent shall have no responsibility for the investment of any funds held hereunder. The Escrow Agent shall not be liable to Seller or Buyer and hereby disclaims any responsibility for any losses or penalties incurred with respect to any such investments.

(f) Subject to the terms hereof, the Escrow Agent may resign without obtaining the order of any court by giving at least thirty (30) calendar days prior written notice to Seller and Buyer of the Escrow Agent's intent to resign and, upon the taking of all the actions as described in this **Section 6(f)** by the Escrow Agent, the Escrow Agent shall have no further responsibilities hereunder to Seller or Buyer or to any other Person in connection with this Escrow Agreement. Such resignation shall be effective upon the appointment by Seller and Buyer of a successor escrow agent, which shall be a bank or other financial institution having capital and surplus of at least \$500,000,000, or as otherwise agreed upon in writing by Seller and Buyer (a "**Qualified Successor Agent**"). Any such Qualified Successor Agent shall be appointed (which appointment shall be made without delay) by a written instrument, mutually satisfactory to, and executed by, Seller, Buyer, and the Qualified Successor Agent, and the Escrow Agent shall execute an assignment by the Escrow Agent of the Escrow Funds to the Qualified Successor Agent. Any Qualified Successor Agent appointed under the provisions of this Escrow Agreement shall have all of the same rights, powers, privileges, immunities, and authority with respect to the matters contemplated herein as are granted herein to the original Escrow Agent and thereafter such Qualified Successor Agent shall be the Escrow Agent hereunder. If Seller and Buyer have failed to appoint a Qualified Successor Agent prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation or removal, the Escrow Agent may appoint a Qualified Successor Agent or petition any court of competent jurisdiction for the appointment of a Qualified Successor Agent or for other appropriate relief, provided that such successor escrow agent must be a Qualified Successor Agent. Any such resulting appointment shall be binding upon all of the parties hereto and thereafter such successor escrow agent shall be the Escrow Agent hereunder.

(g) It is not the intention of the parties hereto to create, nor shall this Escrow Agreement be construed as creating, a partnership or association, or to render the parties hereto liable as partners.

(h) Notwithstanding any provision herein to the contrary, in the event (i) of any disagreement or controversy arising under this Escrow Agreement, (ii) conflicting demands or notices are made upon the Escrow Agent arising out of or relating to this Escrow Agreement, or (iii) the Escrow Agent in good faith is in doubt as to what action it should take hereunder, the Escrow Agent shall have the right, at its election, to withhold and stop all further proceedings in, and performance of, this Escrow Agreement and all instructions received hereunder and file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring all parties involved to interplead and litigate in such court their claims and rights among themselves and with the Escrow Agent. Should any suit or legal proceeding be instituted arising out of or related to this Escrow Agreement, whether such suit be initiated by the Escrow Agent or others, the Escrow Agent shall have the right, at its option, to stop all further proceedings under and performance of this Escrow Agreement and of all instructions received hereunder until all differences shall have been rectified and all doubts resolved by agreement or until the rights of all parties shall have been fully adjudicated.

(i) The Escrow Agent shall have the right to perform any of its duties hereunder through agents, attorneys, custodians, or nominees.

(j) The Escrow Agent shall have the right, but not the obligation, to consult with counsel of its choice and shall not be liable for any action taken or omitted to be taken by the Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent.

(k) The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God, earthquakes, fire, flood, wars, acts of terrorism, civil or military disturbances, sabotage, epidemic, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services, accidents, labor disputes, acts of civil or military authority or governmental action, it being understood that the Escrow Agent shall use commercially reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

7. Fees. Buyer, on the one hand, and Seller, on the other hand, shall each be liable for one-half (1/2) of the fees and expenses of the Escrow Agent as described in **Exhibit B** attached hereto for so long as any portion of the Escrow Funds is held by the Escrow Agent hereunder. The Escrow Agent shall have, and is hereby granted, a prior lien upon any property, cash, or assets of the Escrow Account, with respect to its unpaid fees, non-reimbursed expenses, and unsatisfied indemnification rights, superior to the interests of any other Persons or entities. The Escrow Agent shall be entitled to and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from amounts on deposit in the Escrow Account.

8. Notices and Instructions. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

(a) If to Seller:

Metcom Network Services, Inc.
4250 Veterans Memorial Highway
Suite 3150 West
Holbrook, NY 11741
Attn: Mark DuMoulin, Sr.
Susan B. DuMoulin
Phone: 631-918-4000
Fax:
Email: mark@metcom.com
susanb@metcom.com

With a copy (which shall not constitute notice) by email to:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attention: Neil Ackerman
Kamini Fox, Esq.
Phone: 516-425-5365
Fax: 516-228-3396
E-mail: nackerman@ackermanfox.com
kfox@ackermanfox.com

(b) If to Buyer:

Epsilon US, Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741

Attention: Jerzy Szlosarek
Phone:

Fax:
Email:

With a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius, LLP
111 Pennsylvania Avenue, NW
Washington, DC 20004
Attention: Andrew M. Ray, Esq.
Andrew J. Gallo, Esq.
Phone: (202) 373-6585
Fax: (202) 373-6001
Email: andrew.ray@morganlewis.com
andrew.gallo@morganlewis.com

(c) If to the Escrow Agent:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attention: Neil Ackerman
Kamini Fox, Esq.
Phone: 516-425-5365
Fax: 516-228-3396
E-mail: nackerman@ackermanfox.com
kfox@ackermanfox.com

Account statements shall be sent via first class mail and/or email to the parties in accordance with this **Section 8**.

9. Entire Agreement. This Escrow Agreement and, as between Buyer and Seller, the Agreement, set forth the entire understanding of the parties hereto, and supersede and preempt all prior oral or written understandings and agreements with respect to the subject matter hereof, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

10. Governing Law. This Escrow Agreement shall be governed by the law of the State of New York, without regard to any principles of conflicts of laws that would result in the applicable of the laws of any other jurisdiction, in all respects, except to the extent that the laws of the State of New York are superseded by the Bankruptcy Code.

11. Consent to Jurisdiction; Forum Selection; Waiver of Jury Trial.

(a) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS ESCROW AGREEMENT SHALL BE TRIED AND LITIGATED EXCLUSIVELY IN THE BANKRUPTCY COURT. THE AFOREMENTIONED CHOICE OF VENUE IS INTENDED BY THE PARTIES TO BE MANDATORY AND NOT

PERMISSIVE IN NATURE, THEREBY PRECLUDING THE POSSIBILITY OF LITIGATION BETWEEN THE PARTIES WITH RESPECT TO OR ARISING OUT OF THIS ESCROW AGREEMENT IN ANY JURISDICTION OTHER THAN THOSE SPECIFIED IN THIS **SECTION 11**. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THE CHAPTER 11 CASE HAS BEEN FULLY AND FINALLY DISMISSED AND THE BANKRUPTCY COURT DECLINES JURISDICTION, THE PARTIES AGREE TO AND HEREBY UNCONDITIONALLY AND IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON-CONVENIENS OR SIMILAR DOCTRINE OR TO OBJECT TO VENUE WITH RESPECT TO ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS **SECTION 11**, AND STIPULATES THAT THE COURTS PROVIDED IN THIS **SECTION 11** SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER SUCH PARTY FOR THE PURPOSE OF LITIGATING ANY DISPUTE, CONTROVERSY OR PROCEEDING ARISING OUT OF OR RELATED TO THIS ESCROW AGREEMENT. EACH PARTY HEREBY AUTHORIZES AND ACCEPTS SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST IT AS CONTEMPLATED BY THIS **SECTION 11** BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, TO ITS ADDRESS FOR THE GIVING OF NOTICES AS SET FORTH IN THIS ESCROW AGREEMENT, OR IN THE MANNER SET FORTH IN **SECTION 8** OF THIS ESCROW AGREEMENT FOR THE GIVING OF NOTICE.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS ESCROW AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO. THE PARTIES HERETO EACH AGREE THAT ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION SHALL BE TRIED BY THE COURT WITHOUT A JURY. EACH OF THE PARTIES HERETO FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY SUCH LEGAL PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LEGAL PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

12. Severability. The unenforceability or invalidity of any provision of this Escrow Agreement shall not affect the enforceability or validity of any other provision.

13. Amendment and Waiver. This Escrow Agreement may be amended, or any provision of this Escrow Agreement may be waived; provided that (a) any such amendment or waiver will be binding on Buyer only if such amendment or waiver is set forth in a writing executed by Buyer, (b) any such amendment or waiver will be binding on the Escrow Agent only if such amendment or waiver is set forth in a writing executed by the Escrow Agent, and (c) any such amendment or waiver will be binding upon Seller only if such amendment or waiver is set forth in a writing executed by Seller. The waiver of any provision or breach of this Escrow Agreement shall not operate or be construed as a waiver of any other provision or breach.

14. Headings. The subject headings of Sections of this Escrow Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions.

15. Successors and Assigns. All covenants and agreements contained in this Escrow Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise provided herein, this Escrow Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto.

16. Successor Escrow Agent by Merger. Notwithstanding anything contained herein to the contrary, any entity into which the Escrow Agent may be merged or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all of the Escrow Agent's rights obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of the parties hereto, anything herein to the contrary notwithstanding.

17. Recitals; Not an Amendment. The Recitals set forth above are hereby incorporated herein by reference. This Escrow Agreement is not intended to amend or supersede any provision of the Agreement.

18. Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

19. Electronic Delivery. This Escrow Agreement and any amendments hereto, to the extent signed and delivered by means of portable document format by electronic mail, shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms hereof and deliver them to all other parties hereto. No party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature, or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic transmission, as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

20. Termination. This Escrow Agreement shall terminate upon final disbursement of the Escrow Funds in accordance with the terms hereof.

21. Assignment of Interests. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and acknowledged by the Escrow Agent.

22. Security Procedure for Funds Transfer. The Escrow Agent shall confirm each funds transfer instruction received in the name of a party by means of the security procedure selected by such party and communicated to the Escrow Agent in the form of **Exhibit A-1** and **A-2** attached hereto, which upon receipt by the Escrow Agent shall become a part of this Escrow Agreement. Once delivered to the Escrow Agent, **Exhibit A-1** and **A-2** may be revised or rescinded only by a writing signed by an authorized representative of the party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent reasonable opportunity to act on it. If a revised **Exhibit A-1** or **A-2** or a rescission of an existing **Exhibit A-1** or **A-2** is delivered to the Escrow Agent by an entity that is a successor-in-interest to a party, such document shall be accompanied by additional documentation reasonably satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the party under this Escrow Agreement. The parties understand that the Escrow Agent's inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such party may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

[Signature Page Follows]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

SELLER:

METCOM NETWORK SERVICES, INC.

By: _____

Name:

Title:

BUYER:

EPSILON US INC.

By: _____

Name:

Title:

ESCROW AGENT:

ACKERMAN FOX, LLP,
as Escrow Agent

By: _____
Name:
Title:

EXHIBIT A-1

Buyer Security Procedure

Buyer hereby certifies that the names, titles, telephone numbers, e-mail addresses, and specimen signatures set forth below identify the persons authorized to provide direction and initiate or confirm transactions, including, but not limited to, funds transfer instructions, on behalf of Buyer, and that the option checked in Part C of this Exhibit A-1 is the security procedure selected by Buyer for use in verifying that a funds transfer instruction received by the Escrow Agent is that of Buyer.

Buyer has reviewed each of these security procedures and has determined that the option checked in Part C of this Exhibit A-1 best meets its requirements; given the size, type, and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part C of this Exhibit A-1, Buyer acknowledges that it has elected to not use the other security procedures described below and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by Buyer.

NOTICE: The security procedure selected by Buyer will not be used to detect errors in the funds transfer instructions given by Buyer. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that Buyer take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part A

Name, Title, Telephone Number, E-mail Address, and Specimen Signature for person(s) designated to provide direction, including, but not limited to, funds transfer instructions, and to otherwise act on behalf of Buyer.

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____

Part B

Name, Title, Telephone Number, and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____

Part C

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part B above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts A and B of this Exhibit.

CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail.

Dated this ____ day of _____, 2017.

EPSILON US INC.

By: _____
Name: _____
Title: _____

EXHIBIT A-2

Seller Security Procedure

Seller hereby certifies that the names, titles, telephone numbers, e-mail addresses, and specimen signatures set forth below identify the persons authorized to provide direction and initiate or confirm transactions, including, but not limited to, funds transfer instructions, on behalf of Sellers, and that the option checked in Part C of this Exhibit A-2 is the security procedure selected by Seller for use in verifying that a funds transfer instruction received by the Escrow Agent is that of Seller.

Seller has reviewed each of these security procedures and has determined that the option checked in Part C of this Exhibit A-2 best meets its requirements; given the size, type, and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part C of this Exhibit A-2, Seller acknowledges that it has elected to not use the other security procedures described below and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by Seller.

NOTICE: The security procedure selected by Seller will not be used to detect errors in the funds transfer instructions given by Seller. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that Seller take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part A

Name, Title, Telephone Number, E-mail Address, and Specimen Signature for person(s) designated to provide direction, including, but not limited to, funds transfer instructions, and to otherwise act on behalf of Sellers.

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part B

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____

Part C

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part B above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts A and B of this Exhibit.

CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail.

Dated this ____ day of _____, 2017.

METCOM NETWORK SERVICES, INC.

By: _____

Name: _____

Title: _____

Exhibit B

[To be provided by Escrow Agent]

Schedule I

Wire Transfer Instructions

Buyer Wire Instructions:

Account Name: _____

Bank: _____

ABA #: _____

Account #: _____

Seller Wire Instructions:

Destination Bank:

Routing #:

Account #:

Bank Mailing Address:

Beneficiary Info:

EXHIBIT C

Bill of Sale, Assignment and Assumption Agreement

See Exhibit A.

EXHIBIT D

Certificate of Seller

CLOSING CERTIFICATE

January __, 2017

Reference is hereby made to that certain Asset Purchase Agreement (the “**Purchase Agreement**”), dated as of January 10, 2017, by and among EPSILON US INC., a Delaware corporation (the “**Buyer**”), and METCOM NETWORK SERVICES, INC., a New York corporation (the “**Seller**”). Capitalized terms used but not defined in this certificate shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to Section 4(b) of the Purchase Agreement, the undersigned, [_____], the [_____] of the Seller, does certify solely in his capacity as [_____] of the Seller and not in any individual capacity that:

(a) Each of the representations and warranties set forth in Article V of the Purchase Agreement are true and correct as of the date hereof as if made anew of the date hereof (except to the extent any such representation and warranty expressly relates to an earlier date (in which case is true and correct as of such earlier date)), except where any failure of any such representation and warranty to be true and correct would not have a material adverse effect on Seller’s ability to perform the transactions contemplated by the Purchase Agreement.

(b) The Seller has performed in all material respects all of their covenants and agreements under the Purchase Agreement that are required to be performed by it at or prior to the Closing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

SELLER:

METCOM NETWORK SERVICES, INC.

By: _____

Name:

Title:

EXHIBIT E

Certificate of Buyer

CLOSING CERTIFICATE

January __, 2017

Reference is hereby made to that certain Asset Purchase Agreement (the “**Purchase Agreement**”), dated as of January 10, 2017, by and among EPSILON US INC., a Delaware corporation (the “**Buyer**”), and METCOM NETWORK SERVICES, INC., a New York corporation (the “**Seller**”). Capitalized terms used but not defined in this certificate shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to Section 4(c) of the Purchase Agreement, the undersigned, [_____], the [_____] of the Buyer, does certify solely in his capacity as [_____] of the Buyer and not in any individual capacity that:

(a) Each of the representations and warranties set forth in Article VI of the Purchase Agreement are true and correct as of the date hereof as if made anew of the date hereof (except to the extent any such representation and warranty expressly relates to an earlier date (in which case is true and correct as of such earlier date)), except where any failure of any such representation and warranty to be true and correct would not have a material adverse effect on Buyer’s ability to perform the transactions contemplated by the Purchase Agreement.

(b) The Buyer has performed in all material respects all of their covenants and agreements under the Purchase Agreement that are required to be performed by it at or prior to the Closing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

BUYER:

EPSILON US INC.

By: _____

Name:

Title:

EXHIBIT F

Non-Competition Agreement

NONCOMPETITION AGREEMENT (SELLER)

This NONCOMPETITION AGREEMENT (SELLER) (this “Agreement”) is made as of this ___ day of January, 2017 (the “Effective Date”), by and between EPSILON US INC., a Delaware corporation (“Buyer”), and METCOM NETWORK SERVICES, INC., a Delaware corporation (“Seller”).

WITNESSETH:

WHEREAS, Buyer and Seller are parties to that certain Asset Purchase Agreement, dated as of January 10, 2017, by and among Buyer and Seller (the “Purchase Agreement”), pursuant to which Seller has agreed to sell to Buyer substantially all of the assets of the Business (as defined in the Purchase Agreement), and Buyer’s bid for the Acquired Assets was approved by Bankruptcy Court Order dated January __, 2017, after notice and hearing; and

WHEREAS, the parties desire to enter into this Agreement to establish that Seller will not compete with Buyer in the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. Capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

ARTICLE II NONCOMPETITION

Section 2.01 Competing Business. Subject to the provisions of Sections 2.02 and 2.03 hereof, for a period of 5 years commencing on the Effective Date (the “Term”) Seller shall not (i) provide internet access, web hosting and communications services, or (ii) directly or indirectly engage in, or have any equity ownership in, or participate in the financing, operation or management of any firm, corporation or business that engages in, the business of providing internet access, interconnection, cross connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business (the activities described in clauses (i) and (ii) collectively, the “Competing Business”).

Section 2.02 Acquired Business. Subject to the limitations and exceptions set forth herein, the provisions of Section 2.01 shall prohibit the acquisition by Seller or any of its Subsidiaries of all or any part of a business or Person (whether through the acquisition of assets, securities or other ownership interests, the effecting of a merger, consolidation, share exchange,

business combination, reorganization or recapitalization or other similar transaction) (an “Acquired Business”) that is engaged in a Competing Business.

Section 2.03 Termination.

(a) This Agreement shall terminate and be of no further force or effect upon the expiration of the Term.

(b) Effect of Termination. Upon termination, this Agreement shall forthwith become void and of no further force or effect, except for the following provisions, which shall remain in full force and effect: (i) this Section 2.03, and (ii) Sections 3.08, 3.10, 3.11 and 3.12, and except that any and all claims arising prior to such termination shall survive such termination.

**ARTICLE III
MISCELLANEOUS**

Section 3.01 Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by facsimile transmission, air courier or registered or certified mail, return receipt requested, addressed as follows:

if to Seller:

Metcom Network Services, Inc.
4250 Veterans Memorial Highway
Suite 3150 West
Holbrook, NY 11741
Attn: Mark DuMoulin, Sr.
Susan B. DuMoulin
Phone:
Fax:
Email:

with copies (which shall not constitute notice) by email to:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attn: Neil Ackerman and Kamini Fox, Esq.
Phone:
Fax:
Email: nackerman@ackermanfox.com
kfox@ackermanfox.com

if to Buyer:

Epsilon US Inc.

New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek
Phone:
Fax:
Email:

with a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius, LLP
111 Pennsylvania Avenue, NW
Washington, DC 20004
Attention: Andrew M. Ray, Esq.
Andrew J. Gallo, Esq.
Phone: (202) 373-6585
Fax: (202) 373-6001
Email: andrew.ray@morganlewis.com
andrew.gallo@morganlewis.com

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been delivered (a) when delivered, if delivered personally, (b) when sent (with written confirmation received), if sent by facsimile transmission on a Business Day, (c) on the first Business Day after dispatch (with written confirmation received), if sent by facsimile transmission on a day other than a Business Day, (d) on the second Business Day after dispatch, if sent by air courier, and (e) on the fifth Business Day after mailing, if sent by mail.

Section 3.02 Assignment. No party shall have a right to assign this Agreement or delegate any of its rights, interests, duties or obligations hereunder without the prior written consent of the other party (which consent may be granted in such party's sole discretion); provided, however, that any party may assign this Agreement to any of its Affiliates without the prior written consent of the other parties; and provided, further that no such assignment of this Agreement shall relieve the assignor of any of its obligations or liabilities under this Agreement. Notwithstanding the foregoing, any party may assign this Agreement without the other party's prior written consent in connection with the transfer or sale of all or substantially all of its assets or business or its merger or consolidation with another Person upon written notice to the other party. Any attempted assignment in violation of this Section 3.02 shall be void.

Section 3.03 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 3.04 Amendments. This Agreement shall not be modified, amended or supplemented except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

Section 3.05 No Waiver. The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege conferred in this Agreement, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

Section 3.06 Counterparts. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures of each of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument. Each party may execute this Agreement on a facsimile of the Agreement. In addition, facsimile signatures of authorized signatories of either party shall be valid and binding and delivery of a facsimile signature by either party shall constitute due execution and delivery of this Agreement.

Section 3.07 Interpretation. The article and section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. As used in this Agreement, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and singular shall include the plural. Unless the context otherwise requires, the term "party" when used herein means a party hereto. References herein to a party or other Person include their respective successors and assigns. The words "include," "includes" and "including" when used herein shall be deemed to be followed by the phrase "without limitation" unless such phrase otherwise appears. Unless the context otherwise requires, references herein to Articles and Sections shall be deemed references to Articles and Sections of this Agreement. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision hereof. With regard to each and every term and condition of this Agreement, the parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject thereto, no consideration shall be given to the issue of which party actually prepared, drafted or requested any term or condition of this Agreement.

Section 3.08 Governing Law. This Agreement shall be governed by the law of the State of New York, without regard to any principles of conflicts of laws that would result in the applicable of the laws of any other jurisdiction, in all respects, except to the extent that the laws of the State of New York are superseded by the Bankruptcy Code.

Section 3.09 Unenforceability. If in any judicial proceeding, a court shall refuse to enforce any of the covenants contained herein (or any part thereof), then with respect to such unenforceable covenant (or part thereof) such court is hereby authorized and directed to reform such provision to the maximum time, scope or geographical limitation, as the case may be, permitted by applicable Law, but in no case for a time, scope or geographical area broader than that contemplated herein.

Section 3.10 Entire Agreement.

(a) This Agreement, together with the other Transaction Documents embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, commitments, arrangements, negotiations or understandings, whether oral or written, among the parties hereto and their respective Affiliates with respect thereto. There are no agreements, covenants or undertakings with respect to the subject matter of this Agreement other than those expressly set forth or referred to herein and no representations or warranties of any kind or nature whatsoever, express or implied, are made or shall be deemed to be made herein by the parties hereto, except those expressly made in this Agreement and the Transaction Documents.

(b) THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT NO REPRESENTATION, WARRANTY, PROMISE, INDUCEMENT, UNDERSTANDING, COVENANT OR AGREEMENT HAS BEEN MADE OR RELIED UPON BY ANY PARTY HERETO OTHER THAN THOSE EXPRESSLY SET FORTH IN THE TRANSACTION DOCUMENTS. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMER SET FORTH IN THE PRECEDING SENTENCE, (I) NEITHER SELLER NOR ANY OF ITS AFFILIATES HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES, IN ANY PRESENTATION OR WRITTEN INFORMATION RELATING TO THE BUSINESS OR THE ACQUIRED ASSET'S GIVEN OR TO BE GIVEN IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS, IN ANY FILING MADE OR TO BE MADE BY OR ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES WITH ANY GOVERNMENTAL AUTHORITY, AND NO STATEMENT MADE IN ANY SUCH PRESENTATION OR WRITTEN MATERIALS, MADE IN ANY SUCH FILING OR CONTAINED IN ANY SUCH OTHER INFORMATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE, AND (II) SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY.

Section 3.11 Expenses. Except as expressly set forth herein, each party hereto shall bear all fees and expenses incurred by such party in connection with, relating to or arising out of the execution, delivery and performance of this Agreement and the consummation of the contemplated transactions, including attorneys', accountants' and other professional fees and expenses.

Section 3.12 Injunctive Relief. Seller acknowledges that in the event of a breach by Seller or any of its Subsidiaries of the covenants contained in this Agreement, money damages could be an inadequate remedy. Accordingly, without prejudice to the rights of Buyer also to

seek such damages or other remedies available to it, Buyer may seek injunctive or other equitable relief in any proceeding that Buyer may bring to enforce the covenants contained in this Agreement, without the requirement of a bond or other security. No waiver of any breach of the covenants contained in this Agreement shall be implied from forbearance or failure of Buyer to take action in respect thereof.

[Signature Page Follows]

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

EPSILON US INC.

By: _____
Name:
Title:

**METCOM NETWORK SERVICES,
INC.**

By: _____
Name:
Title:

EXHIBIT G

Bid Procedures Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

METCOM NETWORK SERVICES, INC.,

Chapter 11

Case No. 16-11870 (MKV)

Debtor.

-----X

ORDER APPROVING (i) BIDDING, AUCTION AND OBJECTION PROCEDURES FOR SALE AND ASSUMPTION AND ASSIGNMENT OF ASSETS, LEASES AND AGREEMENTS, AND REJECTION OF AGREEMENTS, (ii) UP TO A \$150,000 EXPENSE REIMBURSEMENT TO EPSILON AS AN ADMINISTRATIVE EXPENSE IF ANY OTHER ENTITY MAKES HIGHER OR BETTER OFFER FOR ASSETS AND LEASES TO BE ASSUMED, (iii) SALE NOTICE, (iv) NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND CURE AMOUNTS, AND (v) FORM AND MANNER OF SERVICE OF NOTICES

Upon the motion dated January 6, 2017 (the "Motion")¹ of Metcom Network Services, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), which in part requested the Court's immediate entry of this Bidding Procedures Order (the "Order") (i) approving bidding, auction ("Auction"), and objection procedures for the Sale, Assumption and Assignment, and Rejection, (ii) approving up to a \$150,000 expense reimbursement ("Expense Reimbursement") to Epsilon U.S., Inc. ("Epsilon" or "Buyer") as an administrative expense in the Debtor's case, to be paid if any other entity makes a higher or better offer which is approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Assumed Agreements, (iii) approving a Sale Notice in the form annexed to the Motion at **Exhibit C** ("Sale Notice"), (iv) approving a Notice of the Debtor's Potential Assumption and Assignment of Certain Executory Contracts and Cure Amounts in the form annexed to the Motion at **Exhibit D** ("Cure Notice"), (v) establishing and approving the form and manner of service of the Sale Notice and Cure Notice; and this Court having considered the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Motion; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DETERMINED THAT:²

A. The Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested in the Motion are sections 105(a), 363, 365 and 1146 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006 and Local Rules 6004-1, 6006-1 and 9006-1(b).

B. The relief granted herein is in the best interests of the Debtor, its estate and other parties in interest.

D. The Debtor's proposed notices of (i) the Sale, (ii) the Assumption and Assignment of, and Cure Amounts (as defined in the Motion and below) for, the executory contracts and leases to be assumed and assigned (collectively, the "Assumed Agreements") to the Successful Bidder, (iii) the Rejection of Agreements, (iv) the APA, and (v) the Bidding Procedures, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of each.

F. The Bidding Procedures are fair, reasonable and appropriate, were negotiated in good faith by the Debtor and Epsilon and represent the best method for maximizing the value of the Debtor's estate in connection with the sale.

² The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

G. The Expense Reimbursement was negotiated by Epsilon and the Debtor in good faith and at arms' length and is (i) an actual and necessary cost and expense of preserving the Debtor's estate, within the meaning of 11 U.S.C. §§ 503(b), 507(a)(2) and 507(b); (ii) commensurate to the real and substantial benefit that Epsilon has conferred upon the Debtor's estate; (iii) reasonable and appropriate, in light of the size and nature of the proposed Sale Transaction and comparable transactions, the commitments that have been made and the efforts that Epsilon has and will continue to expend; (iv) necessary to induce Epsilon to continue to pursue the Sale and be bound by the APA; and (v) a necessary cost of the Sale and a sound and appropriate exercise of the Debtor's business judgment.

H. The procedures herein for the assumption and assignment of the Assumed Contracts and the establishment of cure amounts are reasonable and appropriate.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion for the issuance of this Bidding Procedures Order (the "Motion") is GRANTED, as set forth herein.

2. Any objections filed in response to the Motion and the relief granted herein, to the extent not resolved as set forth herein or at the hearing on the Motion scheduled in this Court's separate Order to Show Cause (the "Hearing"), are hereby overruled.

3. The bid of Epsilon as set forth in APA shall be considered a Qualifying Bid (as defined below).

4. Bidding Procedures. The following Bidding Procedures are hereby approved, and the Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures:

a. Any bidder(s) desiring to submit a bid(s) for the Acquired Assets shall deliver such bid(s) in the form of a signed letter bid ("Bid"), to (i) counsel to the Debtor, Ackerman Fox,

LLP, 90 Merrick Avenue, Suite 400, East Meadow, New York 11554, Attn: Neil Ackerman, Esq. and Kamini Fox, Esq. (nackerman@ackermanfox.com); and (ii) counsel to Epsilon, Andrew Gallo, Esq., Morgan, Lewis & Bockius, LLP, One Federal Street, Boston, MA 02110 (andrew.gallo@morganlewis.com) such that the Bid is actually received no later than 4:00 p.m. Eastern Time on January _____, 2017 (the "Bid Deadline").

b. Any Bid must be deemed "financially qualified" by the Debtor in its sole discretion in accordance with objective criteria set forth in this Bidding Procedures Order which, at a minimum, shall require any entity making a bid to evidence in writing that it has sufficient cash on hand or a binding financial commitment from an established financial institution to ensure such entity's ability to meet its commitments pursuant to its Bid(s) whether made prior to or at the Auction.

c. Any Bid(s) shall become irrevocable until the conclusion of the Auction, if any, except as set forth below, and shall only be considered a "Qualifying Bid" if the Bid is delivered by the Bid Deadline and meets **all** of the following requirements:

- i. The Bid must set forth the identity of the bidder (with name of contact person, address, phone number and email address), and if the entity making the bid is a business, the Bid must contain a description of the bidder(s)' business, and set forth the identity of the officer or authorized agent who will appear on behalf of such bidder at the Auction;
- ii. The Bid must include such prospective bidder(s)' bank statements, financial statements or other information and documents reasonably satisfactory to the Debtor (in the Debtor's sole, unfettered discretion) to evidence the bidder's ability to close on a sale transaction, through written evidence that the bidder has sufficient cash on hand or a binding financial commitment from an established financial institution to ensure such entity's ability to pay all sums due pursuant to its Bid(s) whether the Bid is made prior to or at the Auction;
- i. at a minimum, provides for aggregate consideration of at least \$50,000 over and above the Purchase Price (which expressly includes (A) the \$600,000.00 Cash Purchase Price, (B) all Cure Amounts required to be paid to the counterparties to Assumed Agreements, as identified on the Schedule of Assumed Agreements which is included in the Schedules annexed to the Debtor's Motion at **Exhibit G** (C) the amount necessary to resolve any secured claim asserted against the estate by NFS, Inc.; plus (D) \$150,000 to pay the Expense Reimbursement to Epsilon;
- iii. is not conditioned on the outcome of due diligence by the bidder(s) with respect to the Acquired Assets;

- iv. is not conditioned on the bidder(s)' ability to obtain financing;
- ii. The entity making the Competing Bid shall provide written evidence, satisfactory to the Court, the Debtor and the Debtor's counsel that there are no remaining corporate, partner, shareholder or regulatory approvals required of the entity making the Bid to consummate the transaction and the timing thereof.
- v. provides as good as or better terms, as determined by the Debtor in its sole discretion, as contained in all the APA, all Schedules and exhibits to the APA and the Motion;
- vi. is accompanied by a good faith deposit of \$175,000.00 in cash or certified or cashier's check payable to the Debtor, which deposit shall be subject to the jurisdiction of the Bankruptcy Court, shall be maintained by the Debtor's attorney in a segregated non-interest bearing account, and shall (A) be retained by the Debtor in the event the bidder submits the Successful Bid (as defined below), which is approved by the Bankruptcy Court, but fails to consummate the sale, or (B) be returned to such bidder in the event the Bid is not the Successful Bid or is not approved by the Bankruptcy Court;
- vii. is in the form of an executed asset purchase agreement in the same format as the APA which, subject only to acceptance by the Debtor and approval by the Bankruptcy Court, shall be binding on the bidder;
- viii. is accompanied by a redline showing any changes made to the APA by or in the Bid, except that in no event may any proposed changes make the Bid less favorable to the Debtor than the Bid set forth in the APA, and the Schedules and exhibits thereto.

d. If no Qualifying Bids (other than the bid of Epsilon as set forth in the APA) are received, the Debtor will request this Court at the Hearing to rule that Epsilon has made the highest and best bid for the Assets, Assumed Agreements ("Successful Bidder") and approve a sale to Epsilon pursuant to the APA. If a Qualifying Bid in addition to the bid by Epsilon is received, the Debtor shall hold an auction at this Court at the same date and time as the Hearing on the Debtor's Motion for approval of the Sale (the "Auction").

e. If the Auction is held, all bidders with Qualifying Bids shall appear at such Auction in person, or through a duly authorized representative. Only bidders who have submitted Qualifying Bids meeting the criteria above may participate in the Auction. Before the commencement of the Auction each bidder or its representative shall be required to provide the Debtor with proof satisfactory to the Debtor and the Debtors' counsel that such bidder or representative is legally empowered, by power of attorney or otherwise, and financially capable

to (A) bid on behalf of the prospective bidder(s), and (B) complete and sign, on behalf of the bidder(s), a binding and enforceable purchase and sale and assignment agreement to acquire the Acquired Assets, and to perform its obligations with respect thereto.

f. Epsilon (in its capacity as a Bidder) and each Qualified Bidder participating in the Auction must confirm that it (i) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (ii) has reviewed, understands and accepts the Bidding Procedures, (iii) is bound and intends to be bound by its asset purchase and (iv) has consented to the core jurisdiction of the Court.

g. The Auction shall be conducted by the Debtor and/or the Debtor's counsel, under the direction and supervision of the Court. Bidding will be conducted in minimum increments of \$50,000 ("Incremental Bid Amount"), *provided that* any incremental bids made by Epsilon shall be exempt from the Incremental Bid Amount requirement, so long as such incremental bid made by Epsilon is at least \$5,000.00 more than any other offers made by any other Qualified Bidders at the Auction. The value of the Expense Reimbursement shall be added to any bid by Epsilon for purposes of valuing any bid by Epsilon at the Auction.

h. The Auction shall continue until the Debtor selects the highest or otherwise best offer (the "Successful Bid" and, the Bidder submitting such Successful Bid, the "Successful Bidder"). In selecting the Successful Bid, the Debtor may consider, among other things: (i) the amount and nature of the consideration, (ii) the number, type and nature of any changes to the APA, (iii) the likelihood that the bidder will be available to satisfy any conditions to closing and the likely timing of any closing; (iv) the total consideration associated with the Bid; and (v) the net benefit to the estate of the transaction and stakeholders.

i. All bidders shall be deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to the Auction and the sale of the Acquired Assets.

j. Subject to Bankruptcy Court approval following the Auction, the entity that makes the Successful Bid shall purchase the Acquired Assets free and clear of all liens, claims, encumbrances and interests, pursuant to the Sale and Assumption/Assignment Order entered by this Court.

k. Upon the conclusion of the Auction and the selection of the Successful Bidder, the Debtor shall have the option of selecting one (1) Qualified Bid as the next highest or otherwise best Qualified Bid as back-up bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"). The Back-Up Bid shall remain open until the first business day following the closing of the Sale the Successful Bidder. The Debtor may designate the Back-Up Bidder to close the sale pursuant to its Back-Up Bid in the event the Successful Bidder fails to close, without further Court approval, and the Back-Up Bidder will be required to close the sale within two (2) days after such designation by the Debtor.

l. As soon as practicable after the closing of the Auction, the Debtor's Counsel will return the Qualifying Deposits to all other bidders, except for the Successful Bidder and the Back-up Bidder, whose deposits shall be held until the closing on the Sale.

m. The Successful Bidder must pay the balance of the Purchase Price for the Acquired Assets (the difference between the amount of the successful bid and the Qualifying Deposit) to the Debtor or its attorney, by bank check, or wire transfer, and all Cure Costs to counterparties to the Assumed Agreements that are being assumed, at the Closing (the "Closing").

n. Additional and/or modified terms and conditions may be imposed by the Debtor and announced at the Auction.

5. Sale Notice. The Sale Notice, substantially in the form attached hereto as Exhibit C to the Motion, is approved in all respects. The Sale Notice shall be served, no later than two (2) business days after entry of this Order (the "Mailing Date"), upon: (a) all entities known to have expressed an interest in a transaction with respect to the Acquired Assets; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Acquired Assets; (c) all federal, state and local taxing authorities which have a reasonably known interest in the relief requested by the Motion; (d) the New York Attorney General's office; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) the Office of the United States Trustee; (h) counterparties to Assumed Agreements; and (i) all persons or entities who filed a notice of appearance or a request for receipt of all notices in the Debtor's case, as of the date hereof.

6. On the Mailing Date or as soon thereafter as practicable, the Debtor (or its agents) shall serve by first-class mail, postage prepaid, the Sale Notice upon: (i) all known creditors of the Debtor, as reflected in the Debtor's schedules or amended schedules, or who filed a proof of claim in the Debtor's case as of the date of this Order; and (ii) all known equity security holders of the Debtor, as reflected in the Debtor's list of equity security holders which was filed with this Court.

7. Cure Notice. The proposed Notice of Potential Assumption and Assignment of Certain Executory Contracts and Cure Amounts (the "Cure Notice"), substantially in the form

attached to the Motion as Exhibit D, is approved in all respects. The Cure Notice shall be served, no later than the Mailing Date, upon: (i) the Office of the United States Trustee; (ii) all counterparties to Assumed Agreements.

- (a) Sale and Cure Objections. Any and all objections to the proposed Sale of Acquired Assets, and/or the Assumption and Assignment or Rejection of the Assumed Agreements to Epsilon under the APA, including (a) any objection to the Cure Amount listed on the Schedule of Assumed Agreements, and (b) objections concerning the assumption and assignment of Assumed Agreements based upon Epsilon's ability to provide Adequate Assurance (collectively, "Objections"), must be made in writing which identifies the objecting entity (with name, address, name of contact person, phone number and email address) and its connection with this case, must state with particularity the grounds for such objections or other statements of position, and must be (i) filed with the Clerk of this Court, with copies for chambers as required by this Court's chambers rules, by not later than 4:00 p.m. Eastern Time on a date which is not less than 2 business days prior to the Hearing scheduled by the Court in the Bidding Procedures Order (the "Objection Deadline"), with proof that the Objection has been served so as to be actually received by such Objection Deadline by: (a) counsel to the Debtor, Ackerman Fox, LLP, 90 Merrick Avenue, Suite 400, East Meadow, New York 11554, Attn: Neil Ackerman, Esq. and Kamini Fox, Esq. (nackerman@ackermanfox.com); and (b) counsel to Epsilon, Andrew Gallo, Esq., Morgan, Lewis & Bockius, LLP, One Federal Street, Boston, MA 02110 (andrew.gallo@morganlewis.com) (collectively, the "Notice Parties").

8. Failure to file **and** serve an Objection to the Sale, Assumption and Assignment, or Rejection, on or before the Objection Deadline shall be deemed to be consent for purposes of sections 363(f) and 365 of the Bankruptcy Code.

9. Any objection to a cure amount set forth on the Cure Notice must be made in writing which states with specificity what cure amount is required (with appropriate documentation in support thereof) and must be filed and served on the Notice Parties by the Objection Deadline.

10. If no objection to a proposed Cure Amount set forth in the Cure Notice is timely filed and served as set forth herein, then the Cure Amount set forth in the Cure Notice shall be

binding upon the non-Debtor party to the Assigned Lease and Agreement for all purposes, will constitute a final determination of the Cure Amount required to be paid by the Debtor or the prospective purchaser in connection with the assignment of any such Assigned Lease and Agreement to the Successful Bidder, and the non-Debtor party to the agreement shall be forever barred from asserting any other claims against the Debtor, Epsilon or the Successful Bidder (as appropriate), or the property of any of them, as to the Cure Amount.

11. If an objection is filed with respect to a proposed cure amount set forth in the Cure Notice, the dispute with respect to the cure amount may be resolved consensually, if possible, by the parties, or if the parties are unable to resolve their dispute, by this Court at the Hearing or another hearing to be scheduled by the Court.

12. If at any time after the entry of the Bidding Procedures Order, the Debtor identifies additional prepetition executory contracts and/or unexpired leases to be assumed and assigned as part of the Sale Transaction, the Debtor shall serve a supplemental Cure Notice in the same matter and on the same parties as the Cure Notice. A contract counterparty receiving any such supplemental Cure Notice shall have until the later of (a) the Objection Deadline, or (b) ten (10) days from service of the supplemental Cure Notice to file an objection to the assumption and assignment of its contract(s) and/or leases(s) in accordance with the procedures set forth herein.

13. To the extent that the Successful Bidder is not Epsilon, no later than twenty-four (24) hours after the close of the Auction, the Debtor shall serve adequate assurance information provided by the Successful Bidder on the non-Debtor parties to the Assigned Contracts or their counsel (if known) via electronic mail (for parties that have consented to service by electronic mail) or by email sent to their attorneys, and Non-Debtor parties to Assumed Agreements shall

have until 4:00 p.m. (Eastern Time) on the next day immediately following such date to file and serve (on the Debtor and the Debtor's counsel) objections based upon the ability of any Successful Bidder who is not Epsilon to provide adequate assurance of future performance.

14. The failure of any objecting person or entity to timely file its objection in accordance with the deadlines provided in this Order shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale of the Acquired Assets (including the transfer free and clear of all liens, claims, encumbrances and interests and the Assumption and Assignment of any executory contracts or leases contemplated by a Successful Bid).

15. Expense Reimbursement. The Expense Reimbursement is approved on the terms set forth in APA. Upon the consummation of a Sale Transaction to any person or entity other than Epsilon, the Debtor shall pay Epsilon in cash from the proceeds of such Sale Transaction the Expense Reimbursement of up to \$150,000. To the extent Epsilon becomes entitled to the Expense Reimbursement in accordance with the Bidding Procedures and this Order, Epsilon is hereby granted an allowed administrative claim in this Chapter 11 Case pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code in an amount equal to the Expense Reimbursement, which shall be deemed expunged if the Epsilon is the Successful Bidder. The Bidding Procedures and Expense Reimbursement are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtor's estate.

16. The Debtor is authorized to take all actions necessary and appropriate to implement and effectuate the relief granted pursuant to this Order in accordance with the Motion and to expend such sums of money and do other things as may be necessary and appropriate to comply with the requirements established by the Bidding Procedures and this Order.

17. The Debtor is authorized to conduct the Sale Transaction without the necessity of complying with any state or local bulk transfer laws or requirement.

18. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d) or other applicable law, this Order shall not be stayed after the entry hereof and shall be effective immediately upon signature hereof.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

SIGNED this ____ day of _____, 20__.

Hon. Mary Kay Vysocil
United States Bankruptcy Judge

EXHIBIT H

Sale Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Case No. 16-11870-MKV
Chapter 11

METCOM NETWORK SERVICES, INC.,

Debtor.

-----X

**ORDER PURSUANT TO SECTIONS
105(a), 363, 365 AND 1146 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 2002, 6004 AND 6006, AUTHORIZING
(I) THE SALE OF SUBSTANTIALLY ALL OF DEBTOR’S ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES;
(II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS,
AND (III) REJECTION OF CERTAIN EXECUTORY CONTRACTS**

Upon the motion (the “Motion”)¹ of Metcom Network Services, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”) for, among other things, entry of an order, pursuant to sections 105(a), 363(f), 365, and 1146 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 1001, 2002, 6004, 6006, and 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Bankruptcy Rules (“LBR”) 6004-1, 6006-1, 9006-1, and 9077-1 (i) approving the sale of substantially all of the Debtor’s assets (the “Acquired Assets”)² free and clear of all liens, claims and encumbrances (other than with respect to Assumed Liabilities³) (the “Sale Transaction”) to Epsilon (US) Inc., a Delaware corporation, or a Permitted Designee of Epsilon (“Epsilon” or “Purchaser”), or to the bidder making the highest and otherwise best bid (at the Auction, pursuant to an asset purchase agreement (“APA”), (ii) authorizing the assumption and assignment of certain unexpired leases and executory contracts listed in the Schedule of

¹ All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

² The Acquired Assets consist of substantially all of the Debtor’s assets and shall have the meaning set forth in Section 2(a) of the APA (as defined below). Acquired Assets do not include the Excluded Assets as referenced in Section 2(b) of the APA.

³ As used herein, the term “Assumed Liabilities” shall have the meaning as defined in the APA.

Assumed Agreements which is included in the Schedules annexed to the Motion at **Exhibit G** (“Schedules”) (the “Assumed Agreements”), and (iii) approving the Debtor’s proposed rejection (“Rejection”) of one service order and one agreement specified and listed in the Schedule of Rejected Agreements which is included in the Schedules annexed to the Motion at **Exhibit G** in accordance with the APA (“Rejected Contracts”); and upon the Affidavit of Neil Ackerman duly sworn to on January 9, 2017 (the “Affidavit”) submitted with the Motion; and upon the **ORDER APPROVING (i) BIDDING, AUCTION AND OBJECTION PROCEDURES FOR SALE AND ASSUMPTION AND ASSIGNMENT OF ASSETS, LEASES AND AGREEMENTS, AND REJECTION OF AGREEMENTS, (ii) UP TO A \$150,000 EXPENSE REIMBURSEMENT TO EPSILON AS AN ADMINISTRATIVE EXPENSE IF ANY OTHER ENTITY MAKES HIGHER OR BETTER OFFER FOR ASSETS AND LEASES TO BE ASSUMED, (iii) SALE NOTICE, (iv) NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND CURE AMOUNTS, AND (v) FORM AND MANNER OF SERVICE OF NOTICES** (ECF Doc. No. ____; the “Bidding Procedures Order”) entered by this Court on January ____, 2017; and upon the Sale Notice and the Cure Notice which the Court authorized in the Bidding Procedures Order; and upon the affidavits of service which were filed with this Court by the Debtor’s counsel evidencing the due and timely service of the Sale Notice and the Cure Notice on the persons and entities required to be served, in the time and manner and set forth for such service, in the Bidding Procedures Order; and upon the this Court’s Order to Show Cause dated January ____, 2017, scheduling an expedited hearing on the Debtor’s Motion; and upon the affidavit of service which was filed with this Court by the Debtor’s counsel evidencing its service of the Order to Show Cause, the Motion and all exhibits to the Motion, Sale Notice and the Cure Notice

on the persons and entities required to be served, and in the time and manner set forth in the Order to Show Cause; and the Court having held a hearing on January __, 2017 (the “Sale Hearing”) to approve the Sale Transaction, the Assumption and Assignment of the Assumed Agreements and the Rejection of the Rejected Contracts; and the Court having reviewed and considered (a) the Motion, (b) the objections to the Motion, if any, and (c) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and upon the record of the Sale Hearing and the rest of the proceedings had in this Chapter 11 Case (as defined below); and after due deliberation thereon; and good cause appearing therefor; it is hereby

FOUND AND DETERMINED THAT:⁴

A. **Jurisdiction and Venue.** This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b) & (f), 365(a) & (b), and 1146 of the Bankruptcy Code, Bankruptcy Rules 1001, 2002, 6004, 6006, and 9006(c)(1), and LBR 6004-1, 6006-1, 9006-1, and 9077-1.

C. **Petition Date.** On June 28, 2016 (the “Petition Date”), the Debtor commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

D. **Entry of Bidding Procedures Order.** The Bidding Procedures Order (i) approved bidding, Auction, and objection procedures for the Sale, the Assumption and

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052 and 9014.

Assignment of the Assumed Agreements, and the Rejection of the Rejected Contracts, (ii) approved up to a \$150,000 expense reimbursement to Epsilon (“Expense Reimbursement”) as an administrative expense in the Debtor’s case, to be paid if any other entity made a higher or better offer which was approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Leases and Agreements, (iii) approved the Sale Notice, (iv) approved the Cure Notice, and (v) established and approved the form and manner of service of the Sale Notice and Cure Notice. The Debtor’s counsel or the Debtor served these Notices as required.

E. **Compliance with Bidding Procedures Order.** As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtor has marketed the Acquired Assets and conducted the sale process in compliance with the Bidding Procedures Order, and the Auction was duly noticed and conducted in a non-collusive, fair and good faith manner. The Debtor and its professionals conducted the sale process in compliance with the Bidding Procedures Order, and have afforded potential purchasers a full and fair opportunity to make higher and better offers. The Purchaser acted in compliance with the terms of the Bidding Procedures. In accordance with the Bidding Procedures, the Debtor determined that the bid submitted by the Purchaser and memorialized by the Asset Purchase Agreement dated January , 2017 between the Debtor and Purchaser (attached hereto as Exhibit 1, as may be amended, supplemented or restated, the “APA”) is the Successful Bid (as defined in the Bidding Procedures Order). The APA constitutes the highest and otherwise best offer for the Acquired Assets, and will provide a greater recovery for the Debtor’s estate than would be provided by any other available alternative. The Debtor’s determination that the APA constitutes the highest and

otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtor's business judgment.

F. **Notice.** As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) due, proper, timely, adequate and sufficient notice of the Motion, the APA, the Auction (including the Bid Deadline and all other requirements for the making of Qualified Bids), the Order to Show Cause, the Sale Notice, the Cure Notice, the proposed Sale (including the Objection Deadline with respect to the Sale), the date and time of the Sale Hearing, the Sale Transaction, the procedures for objecting to the Assumption and Assignment of the Assumed Agreements (including the Objection Deadline with respect to the proposed Assumption and Assignment, and any Cure Amount due to the counterparties to the he Assumed Contracts), and the Rejection of the Rejected Contracts, has been provided to the Office of the US Trustee, all known creditors and parties in interest herein, all counterparties to the Assumed Contracts or the Rejected Contracts, all persons or entities that filed a notice of appearance or a request for receipt of all notices in the Debtor's case, the Internal Revenue Service, the New York State Department of Taxation and Finance, the New York City Department of Finance, the Securities and Exchange Commission, and the Office of the Attorney General of the State of New York, in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007, and the applicable Local Rules and Orders of this Court, and fully in compliance with the Bidding Procedures Order; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale Transaction, the Assumption and Assignment of the Assumed Agreements or the Cure Amounts, or the Rejection of the Rejected Contracts, is or shall be required under any applicable law, rule, regulation or Order.

G. **Corporate Authority.** The Debtor (i) has full corporate power and authority to execute the APA and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtor; (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the APA; (iii) has taken all corporate action and formalities necessary to authorize and approve the APA and the consummation by the Debtor of the transactions contemplated thereby, including as required by its organizational documents; and (iv) no government, regulatory or other consents or approvals, other than those expressly provided for in the APA, are required for the Debtor to enter into the APA and consummate the Sale Transaction.

H. **Opportunity to Object.** A fair and reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein, has been given to all interested persons and entities, including but not limited to the following: (i) all counterparties to the Assumed Agreements or the Rejected Contracts; (ii) all known creditors, claimants, and interest holders of the Debtor; and (iii) all applicable federal, state and local taxing and regulatory authorities.

I. **Sale in Best Interest.** Consummation of the Sale of the Acquired Assets to the Purchaser at this time is in the best interests of the Debtor, its creditors, its estate and other parties in interest.

J. **Business Justification.** The Debtor has demonstrated that sound business reasons exist for the Sale Transaction. Entry into the APA, and the consummation of the transactions contemplated thereby, including the Sale Transaction, the Assumption and Assignment of the Assumed Agreements, and the Rejection of the Rejected Contracts, constitutes the Debtor's exercise of sound business judgment and such acts are in the best

interests of the Debtor, its estate, its creditors and all parties in interest. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the Sale Transaction. Such business reasons include, but are not limited to, the following: (i) the APA constitutes the highest and otherwise best offer for the Acquired Assets; (ii) the APA and the closing thereon will present the best opportunity to realize the value of the Acquired Assets on a going concern basis and avoid decline and devaluation of the Acquired Assets; and (iii) unless the Sale Transaction and all of the other transactions contemplated by the APA are concluded expeditiously, as provided for in the Motion and pursuant to the APA, recoveries to creditors may be jeopardized.

K. The Debtor and its professionals actively marketed the Acquired Assets to potential purchasers in accordance with the Bidding Procedures Order. The bidding and auction process set forth in the Bidding Procedures Order and the Bidding Procedures afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Acquired Assets. Based upon the record of this proceeding, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Acquired Assets.

L. No other person or entity or group of persons or entities has offered to purchase the Acquired Assets for an amount that would give equal or greater economic value to the Debtor than the value being provided by the Purchaser pursuant to the APA. Among other things, the Sale Transaction is the best alternative available to the Debtor to maximize the return to its creditors. The terms and conditions of the APA, including the consideration to be realized by the Debtor, are fair and reasonable. Approval of the Motion, the APA and the transactions contemplated thereby, including the Sale Transaction, the assumption and assignment of the

Assumed Agreements, and the Rejection of the Rejected Contracts, is in the best interests of the Debtor, its estate and creditors, and all other parties in interest.

M. **Arm's-Length Sale.** The APA was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith, and from arm's length bargaining positions. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the APA to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders.

N. **Good Faith Purchaser.** The Purchaser is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code and any other applicable or similar bankruptcy and non-bankruptcy law. Specifically: (i) the Purchaser recognized that the Debtor was free to deal with any other party interested in purchasing the Acquired Assets; (ii) the Purchaser complied in all respects with the provisions of the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bid procedures set forth in the Bidding Procedures Order; (iv) the negotiation and execution of the APA was at arm's-length and in good faith, and at all times each of the Purchaser and the Debtor was represented by competent counsel of its choosing; and (v) the Purchaser has not acted in a collusive manner with any person or entity. The Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the APA.

O. **Free and Clear.** The Debtor is the sole and lawful owner of the Acquired Assets and holds good title thereto. The Debtor may sell the Acquired Assets free and clear of all liens, obligations, Excluded Liabilities, claims (within the meaning of section 101(5) of the Bankruptcy

Code), cause of action, chose in action, charge, right of set off, recoupment, rebate, chargeback, credit or return, encumbrances and similar restrictions (other than Assumed Liabilities) (collectively, the “Encumbrances”) because, with respect to each creditor asserting a lien, claim, encumbrance or interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object or withdrew objections to the Sale Transaction are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code; provided, that, any Encumbrances shall attach to the proceeds of the Sale Transaction in the same order of priority, with the same validity, force and effect that they had immediately prior to the Sale Transaction, subject to any rights, claims and defenses that the Debtor, the Debtor’s estate or any trustee or other representative for the Debtor or the Debtor’s estate, as applicable, may possess with respect thereto.

P. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated hereby, including the Sale Transaction and the Assumption and Assignment of the Assumed Agreements, (i) if the transfer of the Acquired Assets were not free and clear of all Encumbrances of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, or (ii) if the Purchaser would, or in the future could, be liable for any Encumbrances, including rights or claims based on any successor or transferee liability. The Purchaser will not consummate the transactions contemplated by the APA, including the Sale Transaction and the Assumption and Assignment of the Assumed Agreements pursuant to the terms of the APA and this Order, unless this Court expressly orders that none of the Purchaser, its affiliates, its present or contemplated members, or the Acquired Assets will

have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff or otherwise, directly or indirectly, any Encumbrances, including rights or claims based on any successor or transferee liability.

Q. Not transferring the Acquired Assets free and clear of all Encumbrances of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, would adversely impact the Debtor's efforts to maximize the value of its estate, and the transfer of the Acquired Assets other than pursuant to a transfer that is free and clear of all liens, claims, encumbrances and other interests of any kind or nature whatsoever would be of substantially less benefit to the Debtor's estate.

R. **Assumption and Assignment of Executory Contracts.** The (i) transfer of the Acquired Assets to the Purchaser and (ii) assignment to the Purchaser of the Assumed Agreements, will not subject the Purchaser to any liability whatsoever (other than Cure Costs that the Purchaser is obligated to pay under the terms of the APA) relating to the period prior to the Closing Date (as defined below) or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including any theory of equitable law, including any theory of antitrust, successor or transferee liability. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assumed Agreements to the Purchaser in connection with the consummation of the Sale Transaction, and the assumption and assignment of the Assumed Agreements is the best interests of the Debtor, its estate and its creditors. The Assumed Agreements being assigned to the Purchaser are an integral part of the Acquired Assets being purchased by the Purchaser and,

accordingly, such Assumption and Assignment of Assumed Agreements is reasonable, enhances the value of the Debtor's estate and does not constitute unfair discrimination.

S. **Cure/Adequate Assurance.** The Debtor and/or the Purchaser have (i) cured, or have provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Agreements, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Agreements within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The Purchaser has provided adequate assurance of future performance of and under the Assumed Agreements within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

T. **Prompt Consummation.** The sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtor and the Purchaser intend to close the Sale Transaction as soon as reasonably practicable. The Debtor has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the transaction contemplated by the APA. Accordingly, there is cause to authorize the Sale and the Assumptions and Assignments immediately following the entry of this Order, and to waive the 14-day stays after entry of the order otherwise applicable under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), with regard to the transactions contemplated by this Sale Order.

U. **No Fraudulent Transfer.** The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under any laws of the United States, any state, territory, possession or the District of Columbia. The Purchaser is not a

mere continuation, and is not holding itself out as a mere continuation, of the Debtor or its estate and there is no continuity between the Purchaser and the Debtor. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor.

V. The consideration provided by the Purchaser for the Acquired Assets pursuant to the APA (i) is fair and reasonable; (ii) is the highest and otherwise best offer for the Acquired Assets; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Conveyance Act, and all other such laws).

W. **No Successor Liability.** The transfer of the Acquired Assets to, and the assumption of the Assumed Liabilities (including any individual elements of the Sale Transaction) by, the Purchaser, except as otherwise expressly set forth in the APA, does not, and will not, subject the Purchaser to any liability whatsoever, with respect to the operation of the Debtor's business prior to the closing of the Sale Transaction or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including any laws affecting antitrust, successor, transferee or vicarious liability. Pursuant to the APA, the Purchaser is not purchasing all of the Debtor's assets, in that the Purchaser is not purchasing any of the Excluded Assets, or assuming the Excluded Liabilities, and the Purchaser is not holding itself out to the public as a continuation of the Debtor. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or

the Debtor's estate. There is not substantial continuity between the Purchaser and the Debtor, and there is no continuity of enterprise between the Debtor and the Purchaser. The Purchaser is not a mere continuation of the Debtor or the Debtor's estate, and the Purchaser does not constitute a successor to the Debtor or the Debtor's estate.

X. **Legal, Valid Transfer.** The transfer of the Acquired Assets to the Purchaser will be a legal, valid and effective transfer of the Acquired Assets, and will vest the Purchaser with all right, title and interest of the Debtor to the Acquired Assets free and clear of all Encumbrances (other than with respect to Assumed Liabilities), as set forth in the APA. The Acquired Assets constitute property of the Debtor's estate and good title is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor is the sole and rightful owner of the Acquired Assets, and no other person has any ownership right, title or interests therein.

Y. **APA Terms Fair and Reasonable.** The terms of the APA and any related agreements, including any amendments, supplements and modifications thereto, are fair and reasonable in all respects.

Z. **Not a Sub Rosa Plan.** The Sale Transaction does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale Transaction neither impermissibly restructures the rights of the Debtor's creditors, nor impermissibly dictates a liquidating plan of reorganization for the Debtor.

AA. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

General Provisions

1. The Motion and the relief requested therein is **GRANTED** and **APPROVED** as set forth herein.

2. Objections that have not been withdrawn, waived or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

Approval of the Sale of the Acquired Assets

3. The APA, including any amendments, supplements and modifications thereto, and all of the terms and conditions therein, is hereby approved.

4. Pursuant to section 363(b) & (f) of the Bankruptcy Code, the sale of the Acquired Assets to the Purchaser free and clear of all Encumbrances (other than with respect to Assumed Liabilities), and the transactions contemplated by the APA are approved in all respects.

Sale and Transfer of Acquired Assets

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is hereby authorized and directed to sell the Acquired Assets to the Purchaser and consummate the Sale Transaction in accordance with, and subject to the terms and conditions of, the APA and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed in accordance with and subject to the terms and conditions of the APA, and the Debtor is further authorized and directed to execute and deliver, and is empowered to perform under, consummate and implement, the APA together with all additional agreements, instruments and documents that may be reasonably necessary or desirable to implement the APA, the form of which is hereby approved, and all related agreements, documents, exhibits and schedules, and to take all further actions as may be reasonably requested by the Purchaser for the purposes of assigning, transferring, granting, conveying and conferring

to the Purchaser or reducing to possession, the Acquired Assets, or as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the APA.

6. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, the Acquired Assets shall be transferred to the Purchaser upon consummation of the APA (the "Closing Date") free and clear of all Encumbrances of any kind or nature whatsoever (other than with respect to Assumed Liabilities), including all claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) and/or interests arising in any way in connection with any agreements, acts or failures to act, of the Debtor or any of the Debtor's predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising before or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under federal or state laws or doctrines of successor or transferee liability. Any Encumbrances not otherwise satisfied in full as the result of the consummation of the Sale shall attach to the proceeds of the Sale Transaction in the same order of priority, with the same validity, force and effect that they had immediately prior to the Sale Transaction, subject to any rights, claims and defenses that the Debtor, the Debtor's estate or any trustee or other representative for the Debtor or the Debtor's estate, as applicable, may possess with respect thereto.

7. To the greatest extent allowable under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are

deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date.

8. Following the Closing Date, the Debtor or the Purchaser is authorized and directed to execute and file a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances in the Acquired Assets of any kind or nature whatsoever. On the Closing Date, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Purchaser. On the Closing Date, this Order also shall be construed, and constitute for any and all purposes, a complete and general assignment of all right, title and interest of the Debtor and the bankruptcy estate to the Purchaser in the Assumed Agreements. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

9. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date.

10. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtor to transfer the Acquired Assets to the Purchaser in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

11. Except as expressly permitted by the APA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding Encumbrances of any kind or nature whatsoever, including rights, interests or claims based on any successor or transferee liability, against or in the Debtor or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Acquired Assets or the operation of the Acquired Assets, or the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Assumed Agreements, are forever barred, estopped and permanently enjoined from asserting against the Purchaser, its respective successors and assigns, their respective property and the Acquired Assets, such persons' or entities' Encumbrances.

12. Following the Closing Date, no holder of an Encumbrance in the Debtor shall interfere with the Purchaser's title to or use and enjoyment of the Acquired Assets and the Assumed Agreements based on or related to such Encumbrance, or any actions that the Debtor may take in its Chapter 11 Case.

13. On the Closing Date of the Sale Transaction, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Encumbrances on the Acquired Assets, if any, as such Encumbrances may have been recorded or otherwise exist.

14. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Acquired Assets on account of the filing or pendency of the Chapter 11 Case

or the consummation of the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Assumed Agreements.

15. Subject to the terms and conditions of this Order, the transfer of the Acquired Assets to the Purchaser pursuant to the APA constitutes a legal, valid and effective transfer of the Acquired Assets, and shall vest the Purchaser with all right, title and interest of the Debtor in and to the Acquired Assets free and clear of all Encumbrances (other than with respect to Assumed Liabilities) of any kind or nature whatsoever.

No Successor Liability

16. The Purchaser is not a “successor” to the Debtor or its estate by reason of any theory of law or equity, and the Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of the Debtor and/or its estate, other than the Assumed Liabilities, with respect to the Acquired Assets or otherwise, including, but not limited to, under any bulk sales law, doctrine or theory of successor liability, or similar theory or basis of liability. Except to the extent the Purchaser assumes Assumed Liabilities and is ultimately permitted to assume the Assumed Agreements pursuant to the APA, neither the purchase of the Acquired Assets by the Purchaser nor the fact that the Purchaser is using any of the Acquired Assets previously used by the Debtor will cause the Purchaser to be deemed a successor in any respect to the Debtor’s business or incur any liability derived therefrom within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor (including any WARN Act), employment, environmental or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine.

17. The Purchaser has given substantial consideration under the APA, which consideration shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser and which shall be deemed to have been given in favor of the Purchaser by all holders of Encumbrances in or against the Debtor, or the Acquired Assets. Upon consummation of the Sale Transaction, the Purchaser shall not be deemed to (i) be the successor to the Debtor; (ii) have, *de facto* or otherwise, merged with or into the Debtor; or (iii) be a mere continuation, alter ego or substantial continuation of the Debtor.

18. Except to the extent specifically agreed by the Purchaser in the APA or this Order, the Purchaser shall not have any liability, responsibility or obligation for any Encumbrances of the Debtor or its estate, including any claims, liabilities or other obligations related to the Acquired Assets prior to Closing Date. Under no circumstances shall the Purchaser be deemed a successor of or to the Debtor for any Encumbrances against, in or to the Debtor or the Acquired Assets. For the purposes of this section of this Order, all references to the Purchaser shall include the Purchaser's affiliates, subsidiaries and shareholders.

Good Faith

19. The transactions contemplated by the APA are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein by this Order to consummate the Sale Transaction shall not affect the validity of the sale of the Acquired Assets to the Purchaser. The Purchaser is a purchaser in good faith of the Acquired Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

20. As a good faith purchaser of the Acquired Assets, the Purchaser has not entered into an agreement with any other potential bidders at the Auction, and has not colluded with any

of the other bidders, potential bidders or any other parties interested in the Acquired Assets, and, therefore, neither the Debtor nor any successor in interest to the Debtor's estate shall be entitled to bring an action against the Purchaser, and the Sale Transaction may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

Assumption and Assignment of Assumed Agreements

21. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale Transaction, the Debtor's assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the APA, of the Assumed Agreements is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

22. The Debtor is hereby authorized and directed in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective upon the Closing Date of the Sale Transaction, the Assumed Agreements free and clear of all Encumbrances of any kind or nature whatsoever and; (ii) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Purchaser.

23. The Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Agreements after such assignment to and assumption by the Purchaser, except as provided in the APA.

24. Any provision in any Assigned Contract that purports to declare a breach or default as a result of a change of control in respect of the Debtor is unenforceable and all Assumed Agreements shall remain in full force and effect. No sections or provisions of any Assumed Agreements that purport to (a) prohibit, restrict, or condition the Debtor's assignment of the Assigned Contract, including, without limitation, the conditioning of such assignment on the consent of the non-Debtor counterparty to such Assigned Contract, or terminate, recapture, impose any penalty, condition, renewal, or extension, or modify any term or condition upon the assignment of such Assumed Agreements; (b) authorize the dissolution of any partnership or determination, cancellation, or modification of any partnership interest or Assigned Contract based on the filing of a bankruptcy case, the financial condition of the Debtor, or similar circumstances; or (c) provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-Debtor counterparty to the Assumed Agreements upon the occurrence of the conditions set forth in subsections (a) and (b) above, shall have any force and effect with respect to the Sale Transaction and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code and, in each case, are void and of no force or effect.

25. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser of each Assigned Contract have been satisfied.

26. All defaults and all other obligations or liabilities under any Assigned Contract occurring, arising, or accruing prior to the date of the assignment or transfer to the Purchaser shall be deemed cured or satisfied upon payment of the proposed Cure Amount (if any), as set

forth in the Cure Notice, or any other cure amount reached by agreement after a Cure Objection, and, without limiting the foregoing, no effect shall be given to any default of the type set forth in section 365(b)(2) of the Bankruptcy Code, or the type of default concerning an unexpired lease of real property described in section 365(b)(1) of the Bankruptcy Code whether or not such Assigned Contract is an executory contract within the meaning of section 365 of the Bankruptcy Code. The Cure Amounts listed on the Cure Notice, or any other cure amounts reached by agreement or by Order of this Court after an Objection, reflect the sole amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under the Assumed Agreements, and no other amounts are or shall be due to the non-debtor parties in connection with the assumption by the Debtors and assignment to the Purchaser of the Assumed Agreements. To the extent a counterparty to an Assigned Contract failed to timely object to a Cure Amount (including any Cure Amount listed as zero), such Cure Amount shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid, shall completely revive any Assigned Contract to which it relates. To the extent the Cure Amount is listed as zero with respect to any Assigned Contract, the failure of the counterparty to the contract to timely object to the Assumption and Assignment of the Contract shall constitute consent to the Assumption and Assignment without the payment of any Cure Amount.

27. As of the Closing, with respect to the Purchaser or any of the Acquired Assets or any Assigned Contract with a Cure Amount listed as zero, and, upon payment of the Cure Amounts (if any) or such other amounts as the non-Debtor counterparties to such contracts shall have agreed to accept in lieu of such Cure Amounts, each non-Debtor counterparty to a Assigned

Contract shall be forever barred, estopped, and permanently enjoined from: (a) objecting to the Cure Amount or asserting any default, monetary or non-monetary, existing as of the Closing Date, (b) asserting any objection to the assumption and/or assignment of such non-Debtor counterparty's Assumed Agreements, whether or not such non-Debtor counterparty previously filed a proof of claim or files a proof of claim in the future, or (c) objecting that the Purchaser has not provided adequate assurance of future performance. Each non-Debtor counterparty to a Assigned Contract (and, with respect to Assumed Agreements with a Cure Amount greater than zero, provided that such Cure Amount is paid) shall be forever barred, estopped, and permanently enjoined from asserting any claim under any Assigned Contract on the basis of breaches or claims under the Assigned Contract existing, arising or accruing prior to or as of the Closing Date. Each non-Debtor counterparty to an Assigned Contract shall be forever barred, estopped, and permanently enjoined from asserting against the Debtor, the Purchaser or their respective property, any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising, or accruing prior to or as of the Closing Date or arising by reason of the closing of the Sale Transaction or the transfer of the Purchased Assets, including, without limitation, any breach related to or arising out of a change-in-control in such Assigned Contract, or any purported written or oral modification to the Assumed Agreements.

28. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtor's and the Purchaser's rights to enforce every term and condition of the Assumed Agreements.

29. All counterparties to an Assigned Contract shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the

Debtor or the Purchaser for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers of the Assumed Agreements in connection with the Sale. Nothing in this Order or any other document is or shall be deemed an admission by the Debtor that any contract, including any Assigned Contract, is an executory contract or unexpired lease or must be assumed and assigned pursuant to the APA in order to consummate the Sale Transaction.

Rejection of Rejected Contracts

30. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale Transaction, the Debtor's Rejection of the Rejected Contracts is hereby approved.

Additional Provisions

31. The consideration provided by the Purchaser for the Acquired Assets under the APA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

32. Each and every federal, state and local governmental agency, court or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. On the Closing Date, the Debtor and the Purchaser are authorized to take such actions as may be necessary to obtain a release of any and all Encumbrances in the Acquired Assets, if any, and to the extent contemplated hereby and by the APA. This Order shall be (i) effective as a determination that, on the Closing Date all Encumbrances of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; and (ii) binding upon

and shall govern the acts of all entities including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. The Purchaser and the Debtor shall take such further steps and execute such further documents, assignments, instruments and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph. All interests of record as of the date of this Order shall be forthwith deemed removed and stricken as against the Acquired Assets. All entities described in this paragraph are authorized and specifically directed to strike all such recorded liens, claims, rights, interests and encumbrances against the Acquired Assets from their records, official and otherwise.

33. If any person or entity that has filed statements or other documents or agreements evidencing claims, liens, encumbrances or interests in any of the Acquired Assets does not deliver to the Debtor or the Purchaser prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all interests that the person or entity has or may assert with respect to any of the Acquired Assets, the Debtor and/or the Purchaser are hereby authorized to execute and file such

statements, instruments, releases and other documents on behalf of such person or entity with respect to any of the Acquired Assets.

34. The Debtor will cooperate with the Purchaser and the Purchaser will cooperate with the Debtor, in each case to ensure that the transaction contemplated in the APA is consummated, and the Debtor will make such modifications or supplements to any bill of sale or other document executed in connection with the closing to facilitate such consummation as contemplated by the APA.

35. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Acquired Assets other than for the Assumed Liabilities. Without limiting the generality of the foregoing, and except as otherwise specifically provided in the APA, the Purchaser shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereinafter arising, whether fixed or contingent, with respect to the Debtor, the Acquired Assets or any obligations of the Debtor arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of or in connection with, or in any way relating to the operation of the business.

36. The terms and provisions of the APA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor and its affiliates, successors and assigns, its estate and its creditors, the Purchaser and its respective affiliates, successors and assigns and any affected third parties including, but not limited to, all persons asserting Encumbrances on the Acquired Assets to be sold to the Purchaser pursuant to the APA,

notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

37. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

38. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate. To the extent that any provision of the APA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

39. Nothing contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Case or any order of this Court confirming such plans or in any other order in the Chapter 11 Case, including any order entered after any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, shall alter, conflict with or derogate from, the provisions of the APA or the terms of this Order. The provisions of this Order and the APA and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtor, or which may be entered converting the Chapter 11 Case from chapter 11 to chapter 7 of the Bankruptcy Code, and the terms and provisions of the APA as well as the rights and interests granted pursuant to this Order and the APA shall continue in the Chapter 11 Case or any superseding case and shall be specifically performable and enforceable against and binding upon the Debtor, its estate and the Purchaser and their respective successors and permitted assigns, including any trustee,

responsible officer or other fiduciary hereafter appointed as a legal representative of the Debtor or its estate under chapter 7 or chapter 11 of the Bankruptcy Code.

40. The provisions of this Order are nonseverable and mutually dependent.

41. The Sale and Assumption and Assignment approved by this Order constitutes a transfer pursuant to Section 1146(a) of the Bankruptcy Code, and accordingly, the Sale and the making, recording or delivery of any instrument of transfer in connection with the Sale, and any transaction in connection with the Sale (or as otherwise necessary or appropriate to consummate the Sale, any Assignment) and any other documents relating to the Sale shall be exempt from any federal, state, local, municipal or other law imposing or claiming to impose any recording tax, transfer tax, or any other applicable stamp or similar tax.

42. Compliance with the legal requirements relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

43. The Debtor and each other person having duties or responsibilities under the APA or this Order, and their respective agents, representatives and attorneys, are authorized and empowered to carry out all of the provisions of the APA, to issue, execute, deliver, file and record, as appropriate, the APA, and any related agreements, and to take any action contemplated by the APA or this Order, and to issue, execute, deliver, file and record, as appropriate, such other contracts, instruments, releases, deeds, bills of sale, assignments or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the APA and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable business corporation, trust and other laws of applicable governmental units with

respect to the implementation and consummation of the APA and this Order and the transactions contemplated thereby and hereby.

44. [In the event the Successful Bidder/Purchaser is Epsilon, then the administrative claim granted to Epsilon for the Expense Reimbursement is hereby expunged in its entirety, and Epsilon shall not have any claim against the debtor or its Bankruptcy Estate related to the Expense Reimbursement, nor shall Epsilon be paid or due to be paid any portion of the Expense Reimbursement.]

45. [_____ is hereby designated as the Backup Bidder. In the event that the Purchaser fails to consummate the Sale Transaction, then the Backup Bidder will be deemed to have the new prevailing bid, and the Debtor will be authorized, without further order of this Court, to consummate the Sale Transaction with the Backup Bidder. In the event the Sale closes to the Backup Bidder, all references in this order to the Purchaser shall refer to the Backup Bidder.]

46. Except for the enumerated obligations of the Purchaser and any permitted assignee(s) under the APA, related agreements executed in connection with the APA and this Sale Order, effective as of the closing and funding of the transactions contemplated thereby, the Debtor and its affiliates, to the extent allowed under applicable law, are each hereby deemed to have irrevocably and unconditionally released, remised, and forever discharged the Purchaser and its affiliates, and their respective past, present and future shareholders, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives and advisors from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, liabilities, interest or causes of action whatsoever at law or in equity, known or unknown, which the Debtor and its affiliates might now or subsequently may have, based on, relating to or

arising out of the APA, the transactions contemplated thereby, the ownership, use or operation of the Acquired Assets or any properties of the Debtor or the condition, quality, status or nature of the Acquired Assets or any properties of the Debtor, including breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, common law rights of contribution and rights under insurance maintained by the Debtor or its affiliates.

47. This Court shall retain exclusive jurisdiction to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Acquired Assets to the Purchaser free and clear of Encumbrances (other than with respect to Assumed Liabilities), or compel the performance of other obligations owed by the Debtor; (ii) compel delivery of the purchase price or performance of other obligations owed to the Debtor; (iii) resolve any disputes arising under or related to the APA, except as otherwise provided therein; (iv) interpret, implement, and enforce the provisions of this Order; and (v) protect the Purchaser against (a) claims made related to any of the Excluded Liabilities; (b) any claims of successor or vicarious liability related to the Acquired Assets or Assumed Agreements; or (c) any claims or Encumbrances asserted on or in the Debtor or the Acquired Assets, of any kind or nature whatsoever.

48. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply. Any party objecting to this Sale Order must exercise due diligence in filing an appeal

and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its
appeal will be foreclosed as moot.

SIGNED this ____ day of January, 2017

Mary Kay Vysocil
United States Bankruptcy Judge

EXHIBIT I

Employment Agreements

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Mark DuMoulin, Sr., an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee, and Employee hereby accepts such employment, as the VP US Operations for the Company, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships; however, such modifications shall not affect or undermine Employee's ability to meet and/or fulfill the Performance Goals defined in **Section 1(b)** below. Employee shall devote all of his business time, attention, and efforts to the performance of Employee's duties hereunder.¹ Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$203,700 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. ("APA"). In addition to his Base Salary and Benefits, upon the one-year anniversary of the Effective Date, and contingent upon the Company's attainment of the performance goals set forth on Exhibit A hereto (the "Performance Goals"), as determined by the Board, and provided that there has been no breach of any of the representations or warranties in clause 5 of the APA which results in or causes a loss, damage, cost, expense or exposure of \$25,000 or more to the Company, Employee shall be eligible to receive a single lump-sum performance bonus of \$250,000 (the "Performance Bonus"), or, in the discretion of the Board, the percentage of such Performance Bonus, if some but not all of the Performance Goals have been reached, set forth in the Weightage Column in Exhibit A hereto in respect of the Performance Goals reached and fulfilled. For the avoidance of doubt, no Performance Bonus will be paid unless Employee is employed by the Company on the one-year anniversary of the Effective Date, except as otherwise set forth in **Section 2(b)**. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company.

¹ It is understood and agreed that Employee operates another business, RFPOP, LLC, which performs engineering services for radio-based customers, and that so long as Employee performs his regular services for Company, he may perform services for this other business on nights after he completes work for Company during the workweek, on weekends, or on legal holidays. In all events, Employee's work for Epsilon shall take precedence and be given priority.

The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of his employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Salary Portion (as defined below) of the Severance Payment will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Salary Portion of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means (i) the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date (the "Salary Portion") and, (ii) to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, the Performance Bonus, on such one-year anniversary.

(c) "Cause" shall mean (i) Employee's failure to perform his duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by

the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement (including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)** and, to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, payment of the Performance Bonus to the Employee's estate, on such one-year anniversary.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue,

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a "separation from service" under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee's last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the "Excess Amount." If at the time of Employee's separation from service, the Company's (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise

and Employee is a “specified employee” (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company’s (or any successor thereto) “specified employee” determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee’s last day of employment with the Company (or any successor thereto) for six (6) months following Employee’s last day of employment with the Company (or any successor thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee’s last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee’s estate within sixty (60) days after Employee’s death.

(c) Reimbursements. All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee’s employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another, subject to footnote 1.

6. Restrictive Covenants.

(a) Employee acknowledges that during his employment with the Company, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company’s subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, “Confidential Information”). In addition, Employee acknowledges that: (i) the Company, the Company’s subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company’s subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company’s subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing his duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company, the Company’s subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all

appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during his employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of his affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. "Restricted Business" means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee's termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service, and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during his employment and for a period of one (1) year following such termination (the "Solicitation Restricted Period"), he shall not, and shall not permit any of his affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, he shall not, and shall not permit any of his affiliates to, directly or indirectly, solicit or entice, or attempt to

solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made

for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in “pdf” or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Mark DuMoulin, Sr.
143 Sportsmen Drive
Central Islip, NY 11722
or at the last known address of Employee contained in the personnel records of the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee’s rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee’s termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. No Third Party Beneficiaries. Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. Entire Agreement. This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, promise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. Headings. The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. Amendments. No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. Survival. To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed
as of the date first above written.

EMPLOYEE

Mark DuMoulin, Sr.

EPSILON US INC.

By: _____
Name:
Title:

EXHIBIT A

Performance Goals

(to be measured as of the one-year anniversary of the Effective Date)

	Key Performance Indicators	Weightage	Payout %
I	Successful absorption of the technical operation of the Debtor into Buyer including integration of the full list of circuits, x connects and billable customer inventory into Buyer's operational systems	40%	
1	Complete documentation of technical operation and inventory list;		20%
2	Assist with and ensure complete transfer of technical operation into Buyer's operational system; access rights to all systems and peripheral systems		20%
II	Successful acquisition of the customer billing as shared in files "Sales summary items" including the successful migration of all customer contracts, sales order forms and agreements into Buyer's finance systems	40%	
1	Provide complete listing of customer contracts, sales order forms		10%
2	Assist Buyer with queries on customer (customer which exist preceding Buyer's acquisition) issues due to background history		10%
3	Render support to ensure smooth transition to buyer order system		20%
III	Successful migration of network equipment, routers, switches and transport equipment over into Buyer's operations environment	10%	
1	Documentation of transfer of business processes and procedures		10%
IV	Successful integration and introduction of Buyer's users on the Debtor's operations/ordering system	10%	
1	Assist buyer and provide knowledge transfer of current ADM/ancillary order system and Quickbooks and peripheral accounting and support system including documentation		10%

Notes:

Payout for each milestone is subject to assessment and to be signed off between Employee and the Company.

The payout will be made on the one-year anniversary, subject to completion and achievement of all KPIs listed.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Mark DuMoulin II, an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee in a position which is substantially similar to Employee's prior position with Metcom Network Services, Inc., and Employee hereby accepts such employment, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships. Employee shall devote all of his business time, attention, and efforts to the performance of Employee's duties hereunder. Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$188,517.68 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company. The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of his employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Severance Payment (as defined below) will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date.

(c) "Cause" shall mean (i) Employee's failure to perform his duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement (including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)**.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue.

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the

appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a “separation from service” under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the “short-term deferral exception” under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the “separation pay exception” under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee’s last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the “Excess Amount.” If at the time of Employee’s separation from service, the Company’s (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise and Employee is a “specified employee” (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company’s (or any successor thereto) “specified employee” determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee’s last day of employment with the Company (or any successor thereto) for six (6) months following Employee’s last day of employment with the Company (or any successor thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee’s last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee’s estate within sixty (60) days after Employee’s death.

(c) Reimbursements. All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another.

6. Restrictive Covenants.

(a) Employee acknowledges that during his employment with the Company, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing his duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during his employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of his affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, principal, agent, trustee

or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. “Restricted Business” means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee’s termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service, and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee’s access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during his employment and for a period of one (1) year following such termination (the “Solicitation Restricted Period”), he shall not, and shall not permit any of his affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee’s access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, he shall not, and shall not permit any of his affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Mark DuMoulin II
310 East 23rd Street, Apt. 9A
New York, NY 10010

or at the last known address of Employee contained in the personnel records of the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee's termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. No Third Party Beneficiaries. Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, promise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed
as of the date first above written.

EMPLOYEE

Mark DuMoulin II

EPSILON US INC.

By: _____
Name:
Title:

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Susan B. DuMoulin, an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee, and Employee hereby accepts such employment, as the VP Office Manager for the Company, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships; however, such modifications shall not affect or undermine Employee's ability to meet and/or fulfill the Performance Goals defined in **Section 1(b)** below. Employee shall devote all of her business time, attention, and efforts to the performance of Employee's duties hereunder. Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$124,754.05 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly). plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. ("APA"). In addition to her Base Salary and Benefits, upon the one-year anniversary of the Effective Date, and contingent upon the Company's attainment of the performance goals set forth on Exhibit A hereto (the "Performance Goals"), as determined by the Board, and provided that there has been no breach of any of the representations or warranties in clause 5 of the APA which results in or causes a loss, damage, cost, expense or exposure of \$25,000 or more to the Company, Employee shall be eligible to receive a single lump-sum performance bonus of \$250,000 (the "Performance Bonus"), or, in the discretion of the Board, the percentage of such Performance Bonus, if some but not all of the Performance Goals have been reached, set forth in the Weightage Column in Exhibit A hereto in respect of the Performance Goals reached and fulfilled. For the avoidance of doubt, no Performance Bonus will be paid unless Employee is employed by the Company on the one-year anniversary of the Effective Date, except as otherwise set forth in **Section 2(b)**. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company. The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be

appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of her employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Salary Portion (as defined below) of the Severance Payment will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Salary Portion of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means (i) the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date (the "Salary Portion") and, (ii) to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, the Performance Bonus, on such one-year anniversary.

(c) "Cause" shall mean (i) Employee's failure to perform her duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement

(including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)** and, to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, payment of the Performance Bonus to the Employee's estate, on such one-year anniversary.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue.

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a "separation from service" under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee's last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the "Excess Amount." If at the time of Employee's separation from service, the Company's (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise and Employee is a "specified employee" (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company's (or any successor thereto) "specified employee" determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee's last day of employment with the Company (or any successor thereto) for six (6) months following Employee's last day of employment with the Company (or any successor

thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee's last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee's estate within sixty (60) days after Employee's death.

(c) **Reimbursements.** All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another.

6. Restrictive Covenants.

(a) Employee acknowledges that during her employment with the Company, she will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "**Confidential Information**"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing her duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during her association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by

legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during her employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of her affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. "Restricted Business" means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee's termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service, and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during her employment and for a period of one (1) year following such termination (the "Solicitation Restricted Period"), she shall not, and shall not permit any of her affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, she shall not, and shall not permit any of her affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending

provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Susan B. DuMoulin
143 Sportsmen Drive

Central Islip, NY 11722

or at the last known address of Employee contained in the personnel records of the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee's termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. **Successors; Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. **No Third Party Beneficiaries.** Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, premise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed
as of the date first above written.

EMPLOYEE

Susan B. DuMoulin

EPSILON US INC.

By: _____
Name:
Title:

EXHIBIT A

Performance Goals

(to be measured as of the one-year anniversary of the Effective Date)

	Key Performance Indicators	Weightage	Payout %
I	Successful absorption of the technical operation of the Debtor into Buyer including integration of the full list of circuits, x connects and billable customer inventory into Buyer's operational systems	40%	
1	Complete documentation of technical operation and inventory list;		20%
2	Assist with and ensure complete transfer of technical operation into Buyer's operational system; access rights to all systems and peripheral systems		20%
II	Successful acquisition of the customer billing as shared in files "Sales summary items" including the successful migration of all customer contracts, sales order forms and agreements into Buyer's finance systems	40%	
1	Provide complete listing of customer contracts, sales order forms		10%
2	Assist Buyer with queries on customer (customer which exist preceding Buyer's acquisition) issues due to background history		10%
3	Render support to ensure smooth transition to buyer order system		20%
III	Successful migration of network equipment, routers, switches and transport equipment over into Buyer's operations environment	10%	
1	Documentation of transfer of business processes and procedures		10%
IV	Successful integration and introduction of Buyer's users on the Debtor's operations/ordering system	10%	
1	Assist buyer and provide knowledge transfer of current ADM/ancillary order system and Quickbooks and peripheral accounting and support system including documentation		10%

Notes:

Payout for each milestone is subject to assessment and to be signed off between Employee and the Company.

The payout will be made on the one-year anniversary, subject to completion and achievement of all KPIs listed.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Michael DuMoulin, an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee in a position which is substantially similar to Employee's prior position with Metcom Network Services, Inc., and Employee hereby accepts such employment, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships. Employee shall devote all of his business time, attention, and efforts to the performance of Employee's duties hereunder. Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$173,087.20 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company. The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of his employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Severance Payment (as defined below) will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date.

(c) "Cause" shall mean (i) Employee's failure to perform his duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement (including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)**.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue.

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the

appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a “separation from service” under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the “short-term deferral exception” under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the “separation pay exception” under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee’s last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the “Excess Amount.” If at the time of Employee’s separation from service, the Company’s (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise and Employee is a “specified employee” (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company’s (or any successor thereto) “specified employee” determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee’s last day of employment with the Company (or any successor thereto) for six (6) months following Employee’s last day of employment with the Company (or any successor thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee’s last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee’s estate within sixty (60) days after Employee’s death.

(c) Reimbursements. All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another.

6. Restrictive Covenants.

(a) Employee acknowledges that during his employment with the Company, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing his duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during his employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of his affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, principal, agent, trustee

or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. “Restricted Business” means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee’s termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee’s access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during his employment and for a period of one (1) year following such termination (the “Solicitation Restricted Period”), he shall not, and shall not permit any of his affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee’s access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, he shall not, and shall not permit any of his affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Michael DuMoulin
285 Southlawn Avenue
Central Islip, NY 11722
or at the last known address of Employee contained in the personnel records of the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee's termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. No Third Party Beneficiaries. Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, promise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed
as of the date first above written.

EMPLOYEE

Michael DuMoulin

EPSILON US INC.

By: _____
Name:
Title:

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

BY AND AMONG

**EPSILON US INC.,
a Delaware corporation**

and

**METCOM NETWORK SERVICES, INC.,
a New York corporation**

January 10, 2017

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made and entered into as of January 10, 2017 (the "*Execution Date*"), by and among EPSILON US INC., a Delaware corporation or its Permitted Designees (as defined below) ("*Buyer*"); and METCOM NETWORK SERVICES, INC., a New York corporation ("*Seller*"). Seller and Buyer are sometimes referred to collectively as the "*Parties*" and individually as a "*Party*."

WITNESSETH:

WHEREAS, on June 28, 2016 (the "*Filing Date*"), Seller filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (as defined below), Case No. 16-11870 (the "*Bankruptcy Case*"), before the United States Bankruptcy Court for the Southern District of New York (the "*Court*"), and Seller continues to operate its business as a debtor-in-possession in the Bankruptcy Case; and

WHEREAS, after good faith, arms-length negotiations, Seller wishes to sell to Buyer and Buyer wishes to purchase from Seller substantially all of the assets of the Business (defined below), with the purpose of operating the Business after the sale as a going concern business, and not for liquidation purposes, and to assume from Seller certain specified liabilities of the Business pursuant to the terms and conditions of this Agreement and an order of the Court approving such sale under Sections 105, 363, 365 and 1146 of the United States Bankruptcy Code (11 U.S.C. § 101 *et. seq.*) (the "*Bankruptcy Code*"), and such sale will include the assumption and assignment of certain executory contracts and unexpired leases in accordance with Section 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS; INTERPRETATION.

(a) Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the respective meanings specified below:

"*Accounts Receivable*" means all rights to payment for goods sold, licensed or leased or for services rendered, all sums of money or other proceeds due or becoming due thereon and all instruments pertaining thereto.

"*Acquired Assets*" has the meaning set forth in Section 2(a).

"*Affiliate*" means, with respect to any Person, (i) a spouse or member of the immediate family of such Person, (ii) any member, manager, director, officer or partner of such Person, (iii) any corporation, partnership, business, association, limited liability company, firm or other entity of which such Person is a member, manager, director, officer or partner or owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock or other equity

interests and (iv) any other Person that directly or indirectly controls, is controlled by or is under direct or indirect common control with such first Person.

"Agreement" has the meaning set forth in the preamble.

"Assumed Agreements" means the contracts, agreements (including without limitation colocation and connectivity agreements), commitments, understandings and instruments relating to or used in the conduct of the Business and the assumed real property leases and all other unexpired real property leases and unexpired personal property leases of Seller relating to property included in the Acquired Assets, all as set forth on the Schedule of Assumed Agreements, which Schedule may be amended from time to time by Buyer in accordance with Section 2(e)(i), *provided*, that any rejected contract, agreement, commitment, understanding, instrument, assumed real property lease or other unexpired real property lease or unexpired personal property lease set forth on the Schedule of Rejected Agreements as a "Rejected Agreement;" and any Seller's Agreement not expressly designated as either an "Assumed Agreement" or "Rejected Agreement" by Buyer shall not be considered an "Assumed Agreement" for purposes of this Agreement.

"Assumed Liabilities" has the meaning set forth in Section 2(c).

"Assumption Agreement(s)" means that certain assignment and assumption agreement(s) to be executed and delivered by Seller and Buyer at Closing, in substantially the form of Exhibit A attached hereto.

"Auction" has the meaning set forth in Section 9(a)(i).

"Bankruptcy Case" has the meaning set forth in the recitals.

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

"Bid Procedures Order" has the meaning set forth in Section 9(a)(i).

"Bill(s) of Sale" has the meaning set forth in Section 4(b)(i).

"Books and Records" has the meaning set forth in Section 2(a)(vii).

"Business" means Seller's entire Internet access, web hosting and communications services business, including, without limitation, all of Seller's fiber optic telecommunications network located in the United States, and all of the rights, assets, customers and colocation and connectivity arrangements associated therewith, and all equipment, agreements and operations necessary to run the Business, including without limitation all of the Acquired Assets, Assumed Liabilities and Assumed Agreements; *provided, however*, that the Business shall not be deemed to include any Excluded Assets, Excluded Liabilities or Rejected Agreements.

"Business Day" means any day other than a Saturday, Sunday, legal holiday or other day on which commercial banks in New York, New York, are authorized or required by Law to be closed.

“*Buyer*” has the meaning set forth in the preamble.

“*Buyer’s Closing Documents*” has the meaning set forth in Section 4(c).

“*Cash Purchase Price*” has the meaning set forth in Section 3(b).

“*Claim*” means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“*Closing*” has the meaning set forth in Section 4(a).

“*Closing Date*” has the meaning set forth in Section 4(a).

“*Code*” means the Internal Revenue Code of 1986, any amendments thereto, any successor statutes and any regulations promulgated thereunder.

“*Court*” has the meaning set forth in the recitals.

“*Cure Amounts*” means those amounts owed by Seller to the other parties under the Assumed Agreements, or those agreements that may be assumed after the Closing under Section 2(f) of this Agreement, and those actions required to be taken by Seller as determined by the Court or by agreement of the parties thereto so that Buyer takes the Assumed Agreements free and clear of any defaults and arrearages as of the Closing Date.

“*Customers*” means Seller’s entire end user customer base with regard to the Business, which are set forth on the Schedule of Customers.

“*Customer Contracts*” means any and all contracts and agreements related to the Customers.

“*Effective Time*” has the meaning set forth in Section 4(a).

“*Employees*” has the meaning set forth in Section 5(g).

“*Excluded Assets*” has the meaning set forth in Section 2(b).

“*Excluded Liabilities*” has the meaning set forth in Section 2(d).

“*Execution Date*” has the meaning set forth in the preamble.

“*Expense Reimbursement*” has the meaning set forth in Section 9(a)(i).

“*FCC*” has the meaning set forth below in the definition of “Governmental Authority.”

“*Fee*” has the meaning set forth in the recitals.

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"Filing Date" has the meaning set forth in the preamble.

"Final Order" shall mean an order of the Bankruptcy Court as to which the time to appeal has expired and as to which no appeal, petition for certiorari, or other proceedings for reconsideration shall then be pending.

"Financial Statements" means Seller's financial statements with respect to the Business for the fiscal year ended December 31, 2015 and the nine months ending September 30, 2016, copies of which have been provided to Buyer by Seller.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Authority" means any agency, board, bureau, executive, court, commission, department, legislature, tribunal, instrumentality or administration of the United States, a foreign country or any state, provincial, territorial, municipal, county, local or other governmental entity in the United States or any foreign country, including without limitation the Federal Communications Commission ("**FCC**").

"Incremental Bid Amount" has the meaning set forth in Section 9(a)(i).

"Intellectual Property" means all U.S. and foreign, whether proprietary or pursuant to license, as the case may be: (a) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) registered and unregistered trademarks, including without limitation the name "**Metcom**," service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) registered and unregistered copyrightable works and copyrights, and all applications, registrations, and renewals in connection therewith; (d) mask works and all applications, registrations, and renewals in connection therewith; (e) trade secrets and confidential business information (including research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer lists, pricing and cost information, and business and marketing plans and proposals to the extent that any of the foregoing constitute trade secrets or confidential information used in connection with the operation of the Business); (f) computer software programs (including data and related documentation); (g) copyrighted software owned by third parties and leased or licensed to Seller; (h) Internet Protocol ("**IP**") space and IP addresses allocated or otherwise made available to Seller; (i) all source codes, object codes, executable codes, databases and files referenced by the codes and all media containing the same and all relevant explanations, documentation, flowcharts, logic diagrams and rules for the source codes; and (j) copies and tangible embodiments of any of the foregoing (in whatever form or medium).

"Inventories" means all inventories of raw materials, works in process, finished products, goods, spare parts, replacement and component parts, and office and other supplies.

"Knowledge of Seller" means the actual knowledge of Mark DuMoulin, Sr. and/or Susan B. DuMoulin.

"Law" means any law, statute, regulation, rule, code, ordinance or court order enacted, adopted, issued or promulgated by any Governmental Authority.

"Liability" or **"Liabilities"** means any and all liabilities, obligations, judgments, damages, charges, costs, debts and indebtedness of any and every kind and nature whatsoever, absolute or contingent, liquidated or unliquidated, in Law, equity or otherwise.

"Lien" means, with respect to any asset or property of any character, any mortgage, pledge, security interest, lien (including any mechanics or materialmen lien, tax lien, shipper or warehousemen lien or customs lien), right of first refusal, option or other right to acquire, transfer for security, charge, Claim, easement, conditional sale agreement, title retention agreement, defect in title, or other encumbrance or adverse Claim of any nature pertaining to or affecting such asset or property, whether voluntary or involuntary and whether arising by Law, contract or otherwise.

"Material Adverse Effect" means any change or changes in, or effect on, the Business or the Acquired Assets that is individually, or are in the aggregate, reasonably likely to be materially adverse to the business, financial condition or results of operations of the Business or the Acquired Assets, each taken as a whole, taking into account Seller's current status as a filer under Chapter 11 of the Bankruptcy Code, other than (i) any change or effect in any way resulting from or arising in connection with this Agreement or any of the transactions contemplated hereby (including any announcement with respect to this Agreement or any of the transactions contemplated hereby); or (ii) changes in (A) economic, regulatory or political conditions generally or (B) general business or economic conditions relating to any industries in which Seller participates, which is not specific to such Seller, in each case which does not have a disproportionate effect on Seller.

"Most Recent Balance Sheet" means the unaudited balance sheet of the Business for the period ended September 30, 2016.

"Motions" has the meaning set forth in Section 9(a).

"Ordinary Course of Business" means the ordinary course of business of Seller and consistent with Seller's past custom and practice (including with respect to quantity and frequency), taking into account the commencement of the Bankruptcy Case and the operation of Seller as a distressed company following the commencement of the Bankruptcy Case.

"Overbid Amount Requirement" has the meaning set forth in Section 9(a)(i).

"Permitted Designees" has the meaning set forth in Section 12(h).

"Permitted Encumbrances" means (i) statutory liens for current Taxes or assessments not yet due or delinquent, (ii) mechanics' carriers', workers', repairers' and other similar liens arising or incurred in the Ordinary Course of Business relating to obligations as to which there is no default on the part of Seller or the validity or amount of which is being contested in good

faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities which do not materially interfere with the present use of the Acquired Assets, and (v) such other liens, imperfections in or failure of title, charges, easements, rights-of-way, encroachments, exceptions, restrictions and encumbrances which do not materially interfere with the present use of the Acquired Assets and neither secure indebtedness or the payment of the deferred purchase price of property, nor individually or in the aggregate create a Material Adverse Effect.

"*Person*" means any individual, corporation, partnership, proprietorship, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, Governmental Authority, or other entity, organization or institution of any type whatsoever.

"*Proprietary Information*" has the meaning set forth in Section 8(g).

"*Purchase Price*" has the meaning set forth in Section 3(b).

"*Qualifying Bidder*" has the meaning set forth in Section 9(a)(i).

"*Rejected Agreements*" means those contracts, agreements, commitments, understandings, instruments, assumed real property leases and all other unexpired real property leases and unexpired personal property leases designated by Buyer under this Agreement which will not be assumed by Buyer under the Assumption Agreement(s), an initial list of such rejected agreements, to be amended from time to time by Buyer pursuant to Section 2(e)(i), being set forth on the Schedule of Rejected Agreements; and, notwithstanding any other provision hereof or any Schedule or Exhibit hereto and regardless of any disclosure to Buyer, any Seller's Agreement not expressly designated as either an "Assumed Agreement" or a "Rejected Agreement" by Buyer by the Closing Date shall be considered a "Rejected Agreement" for purposes of this Agreement.

"*Sale Order*" has the meaning set forth in Section 9(a)(ii).

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

"*Seller's Agreements*" means all contracts, agreements (including without limitation colocation and connectivity agreements), commitments, understandings, instruments, assumed real property leases and all other unexpired real property leases and unexpired personal property leases of Seller set forth on the Schedule of Seller's Agreements.

"*Seller's Closing Documents*" has the meaning set forth in Section 4(b).

"*Subsidiary*" means any corporation, partnership or limited liability company with respect to which a specified Person (or a Subsidiary thereof), directly or indirectly, owns a majority of the common stock or other equity interest, or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors, managers or other governing body of such corporation, partnership or limited liability company.

“*Tax*” means any federal, state, provincial, local, foreign or other income, alternative, minimum, inheritance, accumulated earnings, personal holding company, corporation, franchise, capital stock, net worth, capital, profits, windfall profits, capital gain, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not).

“*Tax Return*” means any return, report, declaration, form, Claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“*Transferred Employees*” has the meaning set forth in Section 7(a).

“*Transaction Documents*” means, collectively, this Agreement, the Escrow Agreement, Seller’s Closing Documents and Buyer’s Closing Documents.

(b) Interpretation; Construction. The headings and captions of the various Sections of this Agreement have been inserted solely for purposes of convenience, are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. Unless stated to the contrary, all references to Sections, paragraphs or clauses herein shall be to the specified Section, paragraph or clause of this Agreement, and all references to Exhibits and Schedules shall be to the specified Exhibits and Schedules attached hereto. All Exhibits and Schedules attached hereto are made a part hereof. All terms defined herein shall have the same meaning in the Exhibits and Schedules, except as otherwise provided therein. All references in this Agreement to “this Agreement” shall be deemed to include the Exhibits and Schedules attached hereto. Words used herein, regardless of the number and gender used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires and, as used herein, unless the context otherwise requires, the words “hereby,” “hereof,” “herein” and “hereunder,” and words of similar import, shall refer to this Agreement as a whole and not to any particular provision hereof. The term “including” shall be deemed to mean “including, without limitation.” The word, “or,” shall not be construed to be exclusive. Provisions shall apply, when appropriate, to successive events and transactions. Accounting terms used herein shall have the meanings given to them by GAAP applied on a consistent basis. References to any Law shall be construed as a reference to the same as in effect on the date of this Agreement. Unless otherwise expressly stated, all dollar amounts stated herein are in United States currency.

2. SALE AND PURCHASE OF ACQUIRED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES.

(a) Purchase and Sale of Acquired Assets. At the Closing, pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy Code and on the terms and subject to the

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conditions precedent of this Agreement, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, accept and acquire from Seller, free and clear of any and all Liens and Claims (other than Permitted Encumbrances), as a going concern and business, and not for liquidation purposes, all of Seller's right, title and interest in and to the following (collectively, the "**Acquired Assets**"):

- (i) All Customers and Customer deposits and advance payments;
- (ii) All fiber optic capacity owned by Seller, all telecommunications and computer equipment, and all furniture, furnishings, automobiles, tools, parts and similar property;
- (iii) All Inventories of Seller;
- (iv) All equipment owned or leased by Seller, subject to the Lien of NFS Leasing, Inc. ("**NFS**"), including, without limitation, as set forth on the **Schedule of Equipment**;
- (v) The Assumed Agreements, to the extent the same are assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, and all rights thereunder for and pertaining to all periods from and after the Effective Time, including any right (A) to receive payment for products sold or services rendered from and after any such Assumed Agreement's assumption by Buyer; and (B) to assert Claims and take other rightful actions in respect of breaches, defaults and other violations of such contracts, arrangements, licenses, leases and other agreements to the extent such violations occur from and after the time at which any such Assumed Agreement is actually assumed by Buyer;
- (vi) All Intellectual Property used by Seller in connection with the Business, together with all related income, royalties, damages and payments due or payable at the Closing or thereafter (including, without limitation, damages and payments for past or future infringements or misappropriations thereof), the right to sue and recover for past infringements or misappropriations thereof, any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property; and except to the extent that it is employed solely in connection with Excluded Assets, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against infringement thereto and rights to protection of interest therein under the laws of all jurisdictions, including any Intellectual Property arising after the date hereof;
- (vii) Originals or copies of all books, records, manuals and other materials (in any form or medium) relating to or used in the Business, or with regard to the Acquired Assets, Assumed Liabilities, Assumed Agreements and Transferred Employees (subject to any necessary consents of such Transferred Employees) (collectively, "**Books and Records**"), including any computerized data bases and files and programs and associated software and including advertising matter, catalogues, price lists, correspondence, mailing lists, Customer lists, supplier lists, vendor lists, distribution lists, photographs, production data, sales

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and promotional materials and records, purchasing materials and records, operating records, Tax records, manufacturing and quality control records and procedures, blueprints, research and development files and records, data books, Intellectual Property disclosures, media materials and plates, accounting records, sales order files and litigation files, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of Seller including books of account, all Customer telephone numbers, addresses and other contact information, lock box account numbers, billing records and other Customer correspondence relating to the Business, all regulatory filings and other Books and Records relating to the rates and services provided by Seller in connection with the operation of the Business;

(viii) All manufacturer warranties and similar rights in favor of Seller with respect to any Acquired Asset;

(ix) All accounts (except as set forth in **Section 2(b)** below), Accounts Receivable (except as set forth in **Section 2(b)(iii)** below), notes and notes receivable which are payable to Seller or its Affiliates and relate to the Business; all guaranties and security therefor, and all goods and services giving rise thereto and the rights pertaining to such goods and services and all related insurance and insurance proceeds with respect thereto and all security deposits and prepayments, prepaid expenses, deposits and advances related to the Business, whether or not reflected on Seller's Books and Records;

(x) To the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the third party or third parties to such agreements, all confidentiality, noncompete or nondisclosure agreements executed by vendors, suppliers or employees of Seller or other third parties, in each case, relating to the Business;

(xi) To the extent assignable under Section 365 of the Bankruptcy Code or to the extent consented to by the insurance providers, all insurance policies of Seller or their Affiliates and any proceeds received thereunder that relate to the Business;

(xii) Except as set forth on the Schedule of Excluded Claims and Rights and subject to Section 2(b)(iv), all of the rights, Claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment of Seller against a third party and relating to the Acquired Assets, the Business and the Assumed Liabilities arising out of transactions occurring prior to the Closing Date, except where such rights, Claims or causes of action relate to Excluded Assets or Excluded Liabilities; to the extent such rights, Claims or causes of action relate to both Assumed Liabilities and Excluded Liabilities, Buyer and Seller shall share such rights, Claims or causes of action in the same proportion as their respective Liabilities bear to the total liability relating to those rights, Claims or causes of action; and

(xiii) All Customer lockbox accounts.

(b) Excluded Assets. Notwithstanding anything to the contrary contained in Section 2(a) or any other provision of this Agreement, the Acquired Assets shall not include the following properties and assets of Seller (collectively, the "Excluded Assets"):

(i) All cash and cash equivalents (expressly including all monies in Seller's possession or in any of Seller's bank accounts as of the Closing Date), all bank, custody and investment accounts, and CDs (other than accounts described in Section 2(a)(ix) and Section 2(a)(xii)), and all marketable securities;

(ii) All deposits, withholdings, prepayments, credits and refunds of Seller or its Affiliates not related to the Business;

(iii) All Accounts Receivables for services, space, facilities or otherwise that were billed or invoiced by Seller on or prior to January 2, 2017 but were not yet paid by third parties to Seller as of Closing;

(iv) All Claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment (x) relating to the Excluded Assets, or (y) that have accrued, arisen or been asserted against any Person or that relate to any period before the Effective Time, in each case which do not relate primarily to the Acquired Assets (including fiduciary duty claims, tort claims and Claims against current and former employees of Seller that accrued prior to Closing), all rights and powers of a trustee and debtor-in-possession against any Person whatsoever, including all avoidance powers granted to Seller under the Bankruptcy Code and all causes of action and remedies granted pursuant to Sections 502, 510, 541, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

(v) All rights of Seller and its Affiliates in, to and under any Rejected Agreements;

(vi) All capital stock or other equity interest of Seller;

(vii) The certificates or articles of incorporation and certificates or articles of formation, qualifications to conduct business as a foreign entity, taxpayer and other identification numbers, seals, minute books, stock/interest transfer books, blank stock certificates, and other corporate or company documents and records relating to the organization or maintenance of the corporate or company existence of Seller;

(viii) All assets held by or for the account of Seller or its Affiliates or employees pursuant to the terms of any deferred compensation, incentive compensation, welfare or other employee benefit plan, or the assets of any related trust described in Section 401 of the Code;

(ix) All rights that accrue to Seller under this Agreement;

(x) Any Governmental Permit or similar right that by its terms or applicable Law is not transferable to Buyer;

(xi) Rights to any Tax refunds of Seller, whether such refund is received as a payment or as a credit against future Taxes;

(xii) Any bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, phantom stock, leave of absence, layoff, vacation, day or

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dependent care, legal services, cafeteria, life, health, accident, disability, workmen's compensation or other insurance, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, or whether for the benefit of a single individual or more than one individual including, but not limited to, any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended; and

(xiii) All rights and claims of Seller against N Plus Systems, LLC ("N Plus"), with respect to rent, power charges, electricity charges, and any other or further monies, costs or charges due to be paid to Seller including but not limited to for services, such as but not limited to Engineering, Installation, Troubleshooting, Environmental Service or any other Labor, Item or request of service from and including January 1, 2017 through the date that N Plus vacates the Premises, in good funds, under par. 4 of a certain Stipulation between N Plus and the Debtor which was approved by Order of the Bankruptcy Court; provided, however, that any rights and claims against N Plus or any of N Plus's principals, owners, agents, employees, attorneys or other professionals arising out of any agreement between Buyer and N Plus, including the assignment of that certain Colocation Agreement as set forth in Section 10(a) hereof, shall remain property of Buyer.

(c) Assumption of Liabilities. On the Closing Date, Buyer shall execute and deliver to Seller one or more Assumption Agreement(s) pursuant to which Buyer shall assume and agree to discharge solely the Liabilities of Seller under the Assumed Agreements accruing from and after the assumption of each such Assumed Agreements (collectively, the "*Assumed Liabilities*").

(d) Excluded Liabilities. Notwithstanding any other provision hereof or any Schedule or Exhibit hereto and regardless of any disclosure to Buyer, other than the Assumed Liabilities or as otherwise expressly set forth in this Agreement or the other Transaction Documents, Buyer shall not assume or be obligated or be responsible to pay, perform, satisfy or otherwise discharge any Liabilities whatsoever (collectively, the "*Excluded Liabilities*").

(e) Assumption of the Assumed Agreements. The Sale Order shall provide for the assumption by Seller and assignment to Buyer of the Assumed Agreements, effective upon the Closing, on the following terms and conditions:

(i) Assumption and Assignment. On the Closing Date Seller shall assume, and Seller shall assign to Buyer, the Assumed Agreements. The Assumed Agreements shall also be identified by the date of the Assumed Agreement, the other party or parties to the Assumed Agreement and the address of such party or parties set forth on the Schedule of Assumed Agreements, all included on an exhibit attached to the Sale Motion for authority to assume and assign such Assumed Agreements. Such exhibit shall set forth the proposed Cure Amounts, if any, under each of such Assumed Agreements as determined by Seller based on Seller's Books and Records, subject to amendment of the Cure Amounts from time to time to the extent Buyer and the other party to such Assumed Agreement agree to a lesser Cure Amount.

(ii) Payment of Cure Amounts. Buyer shall be responsible for the payment of any and all Cure Amounts with respect to the Assumed Agreements to the extent the Cure Amount does not exceed the Cure Amount listed for such Assumed Agreement on the Schedule of Assumed Agreements. Seller shall be responsible for any Cure Amounts in excess of the amounts set forth on the Schedule of Assumed Agreements.

(f) Post-Closing Assignment of Contracts. With respect to any Contract not set forth on the Schedule of Assumed Agreements, and provided such Contract has not been rejected by Seller pursuant to Section 365 of the Bankruptcy Code, upon written notice(s) from Buyer, as soon as practicable, Seller shall take all actions reasonably necessary to assume and assign to Buyer pursuant to Section 365 of the Bankruptcy Code any Contract(s) set forth in Buyer's notice(s); provided that any applicable Cure Amount shall be satisfied by Buyer. Seller acknowledges and agrees that (i) Seller shall provide Buyer with reasonable advance notice of any motion(s) to reject any Contract and (ii) the covenant set forth in this Section 2(f) shall survive the Closing. Notwithstanding anything in this Agreement to the contrary, on the date any Contract is assumed and assigned to Purchaser pursuant to this Section 2(f), such Contract shall be deemed an Assumed Agreement for all purposes under this Agreement.

3. PURCHASE PRICE.

(a) Security Deposit. Within two (2) Business Days of the entering of the Bid Procedures Order, Buyer shall deliver or cause to be delivered by wire transfer or by a certified or cashier's check, the amount of \$131,000 (the "Security Deposit") to Ackerman Fox, LLP, as escrow agent (the "Escrow Agent"), pursuant to the terms and conditions of this Section 3(a) and of an escrow agreement in the form attached hereto as Exhibit B (the "Escrow Agreement") to be executed by Buyer, Seller and the Escrow Agent at the time of delivery of the Security Deposit. At the Closing, the Security Deposit held by the Escrow Agent shall be credited against the Purchase Price (as defined below). If this Agreement is terminated prior to Closing, the Security Deposit shall be distributed in accordance with Section 11(b).

(b) Purchase Price. The purchase price for the Acquired Assets shall be (i) \$600,000 (the "Cash Purchase Price") plus (ii) the Cure Amounts paid by Buyer (such sum, the "Purchase Price"). At the Closing, Buyer shall deliver, or cause to be delivered, to Seller by wire transfer in immediately available funds to (an) account(s) designated in writing by Seller to Buyer prior to the Closing, an amount equal to the Cash Purchase Price minus the Security Deposit.

(c) Allocation of Purchase Price. Buyer and Seller shall use commercially reasonable efforts to agree as to the allocation of the Purchase Price pursuant to Section 1060 of the Code and the rule and regulations thereunder. Buyer and Seller agree to use such allocation in filing all required forms under Section 1060 of the Code and all other Tax Returns, and Buyer and Seller further agree that they shall not take any position inconsistent with such allocation upon any examination of any such Tax Return, in any refund claim or in any Tax litigation. Upon the request of the other, Buyer and Seller agree to provide the other information reasonably necessary to complete Form 8594. Not later than thirty (30) days prior to the filing of their respective Forms 8594 relating to this transaction, each party shall deliver to the other party a copy of its Form 8594. In the event of a dispute with respect to any part of

the allocation of the Purchase Price, Buyer and Seller shall attempt to reconcile their differences and any resolution by them as to any disputed allocation shall be final, binding and conclusive on the parties. If Buyer and Seller are unable to reach a resolution on such differences within thirty (30) days after the date any such dispute arise, Buyer and Seller shall submit the disputed allocations for determination and resolution to the Court, which shall be instructed to determine and report to the parties, upon such disputed allocations, and such report shall be final, binding and conclusive on the parties hereto with respect to the disputed allocations.

4. CLOSING; CLOSING DOCUMENTS.

(a) Closing. The closing ("*Closing*") of the transactions contemplated hereby shall take place as soon as practicable following the date of entry by the Court of the Sale Order in the Bankruptcy Case (provided that the Sale Order is not subject to any stay) (such date, the "*Closing Date*"), at the offices of Morgan, Lewis & Bockius LLP, 101 Park Ave. New York, NY 10178-0060 (or such other place as may be mutually agreeable to the parties). Closing shall be effective as of 12:01 a.m. on the Business Day immediately following the Closing Date (the "*Effective Time*").

(b) Deliveries by Seller. Subject to the fulfillment or waiver of the conditions set forth in Section 10(b), at Closing, Seller shall deliver, or cause to be delivered, to Buyer the following (the "*Seller's Closing Documents*"):

(i) One or more duly executed Bill(s) of Sale for the assets to be conveyed to Buyer substantially in the form of Exhibit C attached hereto (each, a "*Bill of Sale*");

(ii) Duly executed counterpart(s) of one or more Assumption Agreement(s) for Assumed Agreements to be assigned and assumed by Buyer on the Closing Date;

(iii) A certified copy of the Sale Order;

(iv) A certificate of Seller, dated as of the Closing Date, substantially in the form attached hereto as Exhibit D, duly executed by Seller;

(v) A duly executed Non-Competition Agreement from Seller; and

(vi) Such other endorsements, assignments and instruments as are contemplated by this Agreement or as are reasonably deemed necessary by Buyer or Buyer's legal counsel to consummate the sale transactions (as contemplated in the Sale Order), duly executed by Seller.

(c) Deliveries by Buyer. Subject to the fulfillment or waiver of the conditions set forth in Section 10(a), at Closing, Buyer shall deliver to Seller the following (the "*Buyer's Closing Documents*"):

(i) Duly executed counterpart(s) to one or more Assumption Agreement(s) for Assumed Agreements to be assigned to and assumed by Buyer on the Closing Date;

(ii) A certificate of Buyer, dated as of the Closing Date, substantially in the form attached hereto as Exhibit E, duly executed by Buyer; and

(iii) Such other instruments as are contemplated by this Agreement or as are reasonably deemed necessary by Seller or Seller's legal counsel to consummate the sale transactions (as contemplated in the Sale Order), duly executed by Buyer.

5. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents and warrants to Buyer that the statements contained in this Section 5 are true, correct and complete as of the Execution Date and will be true, correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the Execution Date throughout this Section 5), except as set forth in the disclosure schedules accompanying this Agreement (the "*Disclosure Schedules*"). The Disclosure Schedules shall be arranged and correspond to the lettered and numbered paragraphs contained in this Section 5.

(a) Organization, Qualification and Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. Seller has full corporate power and authority (i) to own or lease and to operate its properties and assets (including the Acquired Assets) and to carry on the Business as it is now being conducted and (ii) to enter into this Agreement and each of the other Transaction Documents to be entered into by Seller and to carry out its obligations hereunder and thereunder. The execution, delivery and performance by Seller of this Agreement and each other Transaction Document to be entered into by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, have been approved by all necessary corporate action on the part of Seller. This Agreement and each of the Transaction Documents to which it is a party shall have been duly executed and delivered by Seller and, subject to the approval of the Court, shall constitute the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with their terms.

(b) No Approvals; Conflict. Except for (and subject to obtaining) the approval of the Court and any other approvals of Governmental Authorities identified in Schedule 5(b), and except for (and subject to obtaining) any consents required in connection with the assignment to Buyer of the Assumed Agreements (which consents are identified in Schedule 5(b)), the execution, delivery and performance by Seller of this Agreement and the Transaction Documents, the fulfillment of and compliance with the respective terms and provisions hereof and thereof by Seller, and the consummation of the transactions contemplated hereby and thereby by Seller do not and will not (i) require any consent, authorization or approval of or any filing or registration with any Governmental Authority or other Person; (ii) result in a breach of any material obligation; (iii) constitute a default or an event creating rights of acceleration, termination or cancellation or a loss of material rights; or (iv) result in the creation or imposition of any Lien upon any of the Acquired Assets, in each case under any

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provision of (A) the certificate of incorporation or by-laws of Seller; or (B) any material contract, lease or agreement to which Seller is a party.

(c) Litigation. Except as set forth on Schedule 5(c) and except for the Bankruptcy Case, there is no litigation, action, lawsuit, Claim, audit, review, examination, inquiry, proceeding or investigation pending or, to the Knowledge of Seller, threatened against Seller: (i) that relates to any of the Acquired Assets or the Business, (ii) in which Seller is the plaintiff or claimant; or (iii) that questions the legality or propriety of the transactions contemplated by this Agreement or any of the other Transaction Documents. Except as set forth in Schedule 5(c), there is no outstanding order, writ, injunction, or decree of any Governmental Authority against or affecting any of the Acquired Assets or the Business.

(d) Financial Statements. Seller has made available to Buyer the Financial Statements. The Financial Statements (including the notes thereto) (i) were derived from Seller's historical records relating to the Business; (ii) fairly present in all material respects the items contained thereon; (iii) have been prepared in accordance with GAAP, applied on a consistent basis throughout the period covered thereby; and (iv) present fairly the financial condition of Seller for such period in accordance with GAAP. Seller has made available to Buyer all of their monthly operating reports filed with the Court.

(e) Title to Acquired Assets. Except for Permitted Encumbrances, Seller has, and at the Closing Buyer shall obtain, good and marketable title to, or a valid license or leasehold interest in, all of the Acquired Assets, free and clear of all Liens (other than Permitted Encumbrances). Except as set forth on Schedule 5(e), Seller has not licensed or otherwise granted any person or entity any right or interest in any of the Acquired Assets. No Person currently maintains any Claim, and, no Person has a valid basis for claiming that the operation of the Business or the use of the Acquired Assets infringes, violates or has violated any licensing agreement, patent, non-competition, confidentiality or trademark right or copyright or other rights of any other Person.

(f) Seller's Agreements. The Schedule of Seller's Agreements lists all of Seller's Agreements. Except as set forth in Schedule 5(f), Seller has not assigned, transferred, pledged or otherwise conveyed its rights under any of Seller's Agreements. Except as set forth on Schedule 5(f), Seller's right, title and interest in and to each of Seller's Agreements, is fully assignable to Buyer and, for any of Seller's Agreements that are or become Assumed Agreements prior to the end of the Transition Period, each such Seller's Agreement shall be in full force and effect and Seller will not be in default thereunder. Seller has made available to Buyer current, accurate and complete copies of all Assumed Agreements.

(g) Employees. Schedule 5(g) lists (i) all current employees of Seller working in the Business (the "Employees"), (ii) each Employee's current salary, and accrued but unused vacation, personal or sick time; and (iii) all employment agreements and termination and/or separation agreements between Seller and the Employees, including without limitation any severance arrangements.

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(h) Brokers' Fees. Seller has no Liability to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or for which Buyer could become liable or obligated.

(i) Intellectual Property. Except as set forth in Schedule 5(i), Seller owns or is licensed to use the Intellectual Property used by it in connection with the Business. Schedule 5(i) identifies each patent or registration which has been issued to Seller with respect to any of its Intellectual Property, identifies each pending patent application or pending application for registration which Seller has made with respect to any of their Intellectual Property, and identifies each license or sublicense which Seller has granted to any third party with respect to any of their Intellectual Property. Schedule 5(i) identifies each item of Intellectual Property that any third party owns and that Seller uses pursuant to license or, sublicense, other than "shrink-wrap" or "off the shelf" software. Seller has not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and neither Seller nor any of its directors and officers (and Employees with responsibility for Intellectual Property matters) has ever received any charge, complaint, Claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any Claim that Seller must license or refrain from using any Intellectual Property rights of any third party). To the Knowledge of Seller, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of Seller or their Subsidiaries. The Intellectual Property set forth on Schedule 5(i) includes all Intellectual Property necessary to continue to operate the Business in the Ordinary Course of Business.

(j) Governmental Permits.

(i) Each Seller owns, holds or possesses all licenses, franchises, permits, privileges, immunities, regulatory approvals and other approvals and authorizations from a Governmental Authority which are necessary to entitle it to own or lease, operate and use the Acquired Assets and to carry on and conduct the Business as currently conducted (collectively, "Governmental Permits"). Schedule 5(j)(i) sets forth a list of each Governmental Permit.

(ii) Except as set forth in Schedule 5(j)(ii), (A) Seller has fulfilled and performed its obligations under each of the Governmental Permits, and no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Governmental Permit or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Governmental Permit, or which might adversely affect the rights of the Seller under any such Governmental Permit; (B) no notice of cancellation, of default or of any dispute concerning any Governmental Permit, or of any event, condition or state of facts described in the preceding clause, has been received by, or is known to, either Seller; and (C) each of the Governmental Permits is valid, subsisting and in full force and effect and will continue to be in full force and effect immediately after the Closing, in each case without (x) the occurrence of any breach, default or forfeiture of rights hereunder, or (y) the consent, approval, or act of, or the making of any filing with, any Governmental Body.

(iii) Except as set forth in Schedule 5(j)(iii), the operations of Seller are in compliance with the terms and conditions of the Governmental Permits and with the Communications Act of 1934, as amended, the rules, regulations, orders, and policies promulgated by the FCC; applicable state law and the rules, regulations, orders, and policies promulgated by the regulatory authorities in the states in which the Seller engages in the Business ("*State Regulators*"); and applicable local law and the rules, regulations, orders, and policies (the "*Communications Laws*") promulgated by any municipality in which Seller engages in the Business ("*Municipalities*"), including, without limitation, the obligations of Seller to make any payment to finance regulatory funding mechanisms such as federal or state universal service funds, telecommunications relay service, local number portability, administration of the North American Numbering Plan, and emergency calling services and comply with the provisions of the Communications Assistance for Law Enforcement Act and the FCC's rules and regulations for the safeguarding of customer proprietary network information and for the handling of 911 calls.

(iv) Except as set forth in Schedule 5(j)(iv), (A) Seller has made all required filings with the FCC, the State Regulators, and the Municipalities required to conduct the Business, comply with the Communications Laws, and maintain the Governmental Permits, (B) Seller has made all payments that have become due as required by the Communications Laws and has no overdue payments owed to the FCC, State Regulators, Municipalities, or any other related agency, including but not limited to the Universal Service Administrative Company, Telecommunications Relay Service administrators, and their State equivalents and (C) Seller maintains on file with the FCC and State Regulators all required tariffs, which tariffs accurately list such Seller's service offerings and the rates therefor.

(v) Except as set forth in Schedule 5(j)(v), no petition, action, investigation, notice of violation or apparent liability, notice of forfeiture, order to show cause, complaint, or proceeding is pending concerning Seller's compliance with the Communications Laws or is seeking to revoke, reconsider the grant of, cancel, not renew, suspend, condition or otherwise place restrictions on, or modify any of the Governmental Permits, or to Seller's Knowledge, threatened before any Governmental Body; and no event has occurred that would reasonably be expected to result in any of the actions so described.

(vi) Except for the applicable requirements of the Communications Laws, and as set forth on the attached Schedule 5(j)(vi), (i) Seller is not required to submit any notice, report or other filing with any Governmental Body in connection with the execution, delivery or performance by it of this Agreement or the consummation of the transactions contemplated hereby and (ii) no consent, approval or authorization of, or declaration to or filing with, any court, legislative, executive, administrative, governmental or regulatory authority or any other party or Person is required to be obtained by Seller in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

(vii) Except as set forth on Schedule 5(j)(vii), there are no unresolved customer complaints (formal or informal) against either Seller pending before the FCC, State Regulators, State Attorneys General or other Governmental Body.

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(k) Acquired Assets. The Acquired Assets transferred to Buyer at the Closing will be sufficient to enable Buyer to operate the Business immediately following the Closing in the same manner in which Seller operated the Business on the date immediately preceding the Closing Date. Seller owns or leases all buildings, machinery, equipment and other tangible assets necessary for the conduct of the Business as presently conducted and as presently proposed to be conducted. Each Acquired Asset is free from defects (subject to normal wear and tear), has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used.

(l) Disclosure. No representation or warranty by Seller contained in this Agreement, and no statement contained in the Schedules delivered by Seller pursuant to this Agreement, contains any untrue statement of material fact or omits to state any material fact necessary, in light of the circumstances under which it was made, to make the statements herein or therein no misleading.

(m) Undisclosed Liabilities. Seller has no Liabilities except for (i) Liabilities set forth on the face of the Most Recent Balance Sheet, (ii) Liabilities which have arisen after the date of the Most Recent Balance Sheet in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law), and which are not individually or in the aggregate, material, (iii) Liabilities set forth in Schedule 5(m), and (iv) any debts listed in Schedules D, E or F of the Schedules or Amended Schedules which have been filed by Buyer in the Bankruptcy Case, as attached to Schedule 5(m), or as may be set forth in any proof of claim which is or may be filed in Buyer's Bankruptcy Case including but not limited to any filed on or before the last date for filing claims against Buyer as set forth in the Court's Order dated September 16, 2016.

(n) Insurance. All contracts of insurance in force as of the date of this Agreement with respect to the Business are in full force and effect. Seller has complied in all material respects with the terms and conditions of all such contracts, has timely paid all premiums thereunder and has not received notice of cancellation of any such insurance. There is no claim by Seller pending under any such contracts as to which coverage has been questioned, denied or disputed by the underwriters of such contracts.

(o) Legal Compliance. Seller has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, Claim, demand, or notice has been filed or commenced against any of them alleging any failure so to comply.

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller that the statements contained in this Section 6 are true, correct and complete as of the Execution Date and will be true, correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the Execution Date throughout this Section 6).

(a) Organization, Qualification and Authority. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has full corporate power and authority to enter into this Agreement and each of the other Transaction Documents to be entered into by Buyer and to carry out its obligations hereunder and thereunder. The execution, delivery and performance by Buyer of this Agreement and of each other Transaction Document to be entered into by Buyer, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been approved by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding agreement of Buyer, enforceable against it in accordance with its terms.

(b) No Approvals; Conflict. Except for the approval of the Court, the execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents, the fulfillment of and compliance with the respective terms and provisions hereof and thereof by Buyer and the consummation of the transactions contemplated hereby and thereby by Buyer do not and will not require any consent, authorization or approval of or any filing or registration with any Governmental Authority or other Person.

(c) Litigation. There is no litigation, action, lawsuit, Claim, audit, review, examination, inquiry, proceeding or investigation involving Buyer pending or, to Buyer's knowledge, threatened which questions the legality or propriety of the transactions contemplated by this Agreement or any of the other Transaction Documents.

(d) Brokers' Fees. Buyer has no Liability to pay any fees or commissions to any broker or finder with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

(e) Affiliates. Buyer and its officers, directors, stockholders and agents are not creditors, stockholders, or Affiliates of the Seller, and are not insiders or Affiliates (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of any creditors of the Seller or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the Seller, subleasing space from the Seller, or had any agreements (whether written or oral) with the Seller or any of the Seller's creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the Seller to obtain the Court's approval of this Agreement or to consummate the transactions contemplated by and under this Agreement.

7. EMPLOYEES.

(a) Buyer shall either (i) extend offers of employment (contingent upon the Closing) to the Employees of Seller listed on Schedule 7(a) (employees who accept such offers of employment from Buyer are referred to herein as "*Transferred Employees*") on terms and conditions which offers shall provide for compensation and benefits substantially similar to the compensation and benefits provided by Seller to such employee (as listed on Schedule A), or (ii) agree to assume Seller's agreement with TriNet HR Corporation dated February 25, 2016.

(b) Except for the Transferred Employees, no person who is or who has been an employee of Seller shall transfer employment to Buyer in connection with Buyer's purchase of the Acquired Assets pursuant to this Agreement. Except in relation to the Transferred Employees after the Closing Date, Seller shall retain the sole responsibility for all matters relating to the maintenance of personnel and payroll records, the withholding and payment of federal, state and local income and payroll taxes, the payment of workers' compensation and unemployment compensation insurance, salaries, wages and pension, welfare and other fringe benefits, including any severance and/or pay-out of accrued vacation pay which may be triggered as a result of any termination of employment (including all severance and vacation pay Liabilities incurred on or prior to the Closing Date) and the conduct of all other matters relating to labor relations. Seller shall retain Liability for compliance with all applicable labor and employment Laws relating to the Employees in connection with their employment by Seller, and Seller shall indemnify Buyer (and its successors, assigns, officers, directors and employees) for any Liability or legal or other expenses that result from any legal action alleging noncompliance with such Laws.

8. COVENANTS.

(a) General. Subject to Section 9 and the procedures set forth in the Bid Procedures Order, each of the Parties shall use its commercially reasonable efforts to take all actions and do all things reasonably necessary, proper or advisable in order to consummate and make effective the transactions contemplated by this Agreement, including satisfaction, but not waiver, of the closing conditions set forth in Section 10, below.

(b) Operation of Business.

(i) Except as otherwise contemplated by this Agreement, and except as required by the Court, during the period from the Execution Date until the Closing Date, Seller shall not engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business, except that subject to Section 9, Seller may take actions to sell its assets other than the Acquired Assets or to settle or resolve its Liabilities or assign its Liabilities other than Assumed Liabilities. Seller shall (A) operate the Business in the Ordinary Course of Business; (B) other than as expressly contemplated by this Agreement or otherwise permitted in writing by Buyer, preserve the Business; (C) endeavor to preserve the goodwill and relationships with customers, suppliers and others having business dealings with the Business, in each case, taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code; and (D) pay, on a current basis, any Liabilities pursuant to any Seller's Agreements that are not Rejected Agreements.

(ii) Prior to Closing, without the prior written consent of Buyer, Seller shall not (A) terminate, extend or otherwise amend any licenses with the FCC; (B) other than Permitted Encumbrances, create, incur, assume or suffer to exist any Lien upon the Acquired Assets; (C) cause to increase or accelerate any of the Assumed Liabilities; or (D) sell, lease (as lessor), transfer or otherwise dispose of, any of the Acquired Assets, in each case, other than in the Ordinary Course of Business.

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(iii) Prior to Closing, Seller shall continue all activities necessary to preserve and maintain in full force and effect all of its Governmental Permits.

(c) Reasonable Access. Until the end of the Transition Period, Seller shall use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to permit representatives of Buyer to have access, at all reasonable times and in a manner so as not to interfere with the normal business operations of Seller, to all premises, properties, personnel, Books and Records, contracts, and documents of or pertaining to Seller related to the Business, the Seller's Agreements, the Acquired Assets and the Assumed Liabilities.

(d) Notice of Developments. At any time prior to Closing, Seller shall provide Buyer prompt, due and sufficient notice of (i) material developments relating to the Business, including any development causing a breach of any of their representations and warranties hereunder; (ii) the occurrence, or failure to occur, of any event which occurrence or failure to occur would cause any representation or warranty contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date; and (iii) any failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. In addition, Seller shall, prior to Closing, supplement the Disclosure Schedules hereto with respect to any matters that, if existing or known as of the date hereof, would have been required to have been set forth or described in the Disclosure Schedules. Any such supplemental disclosure shall not be deemed to cure any breach of any representation or warranty made herein as of the date hereof, nor shall it be deemed to have been disclosed to Buyer as of the date hereof for the purposes of determining whether or not Buyer has any further obligation to consummate the transactions contemplated hereby.

(e) Post-Closing Access to Records. For a period of three (3) years after the Closing Date, each Party and its representatives shall have reasonable access to all Books and Records relating to the Business or the Acquired Assets, including, without limitation, all information pertaining to the Assumed Agreements, all Transferred Employee records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such party in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Business and the Acquired Assets. Such access shall be afforded by the party in possession of such Books and Records upon receipt of reasonable advance notice and during normal business hours; *provided, however,* that (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any party or its Affiliates, (ii) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege, and (iii) no Party need supply the other Party with any information which such Party is under a legal obligation not to supply. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 8(e).

(f) Further Actions.

(i) Seller and Buyer agree to use commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the Closing Date.

(ii) Seller and Buyer shall, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by any of them pursuant to applicable Law in connection with this Agreement and the Transaction Documents, the sale and transfer of the Acquired Assets pursuant to this Agreement and the consummation of the other transactions contemplated thereby.

(iii) Seller and Buyer, as promptly as practicable, shall use all commercially reasonable efforts to obtain, or cause to be obtained, all material consents (including consents to assignment of Governmental Permits and any consents required under any Seller's Agreement) necessary to be obtained by any of them in order to consummate the sale and transfer of the Acquired Assets pursuant to this Agreement.

(iv) Seller and Buyer shall, and shall cause each of their respective Affiliates to, coordinate and cooperate with each of the other parties in exchanging such information and supplying such assistance as may be reasonably requested by Seller or Buyer in connection with the filings and other actions contemplated by this Section 8(f).

(v) At all times prior to the Closing, each Party shall promptly notify the other in writing of any fact, condition, event or occurrence that will or may likely result in the failure of any of the conditions contained in Section 10 to be satisfied, promptly upon becoming aware of the same.

(g) Confidentiality.

(i) Seller possesses and will possess following the Closing business information relating to Buyer, the Acquired Assets, the Assumed Liabilities and the Business, all of which shall be deemed to constitute confidential and proprietary information (the "**Proprietary Information**"). Seller agrees that for a period of three (3) years following the Closing, Seller will maintain the confidentiality of all Proprietary Information and will not use, or disclose to any other party, for any purpose whatsoever, any Proprietary Information relating to the Acquired Assets or the Business, except to authorized representatives of Seller and to counsel and other advisors, including its auditors, provided that such advisors (other than counsel) agree to the confidentiality provisions of this Section 8(g)), unless (A) such information becomes known to the public generally through no fault of Seller, (B) disclosure is required by Law or the order of any Governmental Authority under color of Law, or (C) Seller reasonably believes that such disclosure is required in connection with the defense of a lawsuit or for certification or state licensure purposes; *provided*, that prior to disclosing any information pursuant to clauses (A), (B) or (C) above, Seller shall, if possible, give prior written notice thereof to Buyer, and provide Buyer with the opportunity to contest such disclosure. Further, Seller acknowledges the critical importance of maintaining the Proprietary Information as confidential and agrees that because any award of monetary damages would be inadequate for

any breach of this covenant and would cause prior irreparable harm to Buyer, that in the event of any breach or threatened breach of this covenant Buyer will be entitled to equitable relief, including injunctive relief and specific performance. Such remedy shall not be the exclusive remedy for any breach of this covenant but will be in addition to all other remedies available at law or equity.

(ii) Buyer agrees that prior to the Closing and, in the event that Buyer is not the successful bidder, after the termination of this Agreement, it will not disclose for a period of three (3) years following the Closing, Proprietary Information with respect to Seller, the Acquired Assets, the Assumed Liabilities or the Business, for any purpose or reason whatsoever (except to authorized representatives of Buyer and to counsel and other advisors, including its auditors, provided that such advisors (other than counsel) agree to the confidentiality provisions of this Section 8(g)), unless (A) such information becomes known to the public generally through no fault of Buyer, (B) disclosure is required by Law or the order of any Governmental Authority under color of Law, or (C) Buyer reasonably believes that such disclosure is required in connection with the defense of a lawsuit or for certification or state licensure purposes; *provided*, that prior to disclosing any information pursuant to clauses (A), (B) or (C) above, Buyer shall, if possible, give prior written notice thereof to Seller, and provide Seller with the opportunity to contest such disclosure. Further, Buyer acknowledges the critical importance of maintaining the Proprietary Information as confidential and agrees that because any award of monetary damages would be inadequate for any breach of this covenant and would cause prior irreparable harm to Seller, that in the event of any breach or threatened breach of this covenant, Seller will be entitled to equitable relief, including injunctive relief and specific performance. Such remedy shall not be the exclusive remedy for any breach of this covenant but will be in addition to all other remedies available at law or equity.

(h) Non-Competition. Seller shall enter into a Non-Competition Agreement with Buyer substantially in the form attached hereto as Exhibit F.

(i) Cure. Seller shall cure any defaults under the Assumed Agreements (excluding the Cure Amounts to be paid by Buyer) on or prior to the Closing Date.

(j) Notification. Seller shall notify Buyer and keep it advised of the occurrence of (i) any litigation or administrative proceeding pending or threatened against Seller and (ii) any material damage or destruction of any of the Acquired Assets.

(k) Post-Closing Access to Books and Records. For a period of three (3) years after the Closing Date, Seller, Buyer and their representatives shall have reasonable access to, and each shall have the right to photocopy at their own expense, all of the Books and Records relating to the pre-Closing operations of Seller and/or the Acquired Assets as they existed as of the Closing Date, including but not limited to (i) the investigation, evaluation and prosecution of any and all causes of action retained by Seller, (ii) the evaluation and defense of any and all claims brought against the estate of Seller and (iii) all Transferred Employees' records or other personnel and medical records required by law, legal process or subpoena, in the possession of the other party to the extent that such access may reasonably be required by such party in connection with the Assumed Liabilities and Excluded Liabilities, or other matters relating to or affected by the operation of the Business or use of the Acquired Assets; provided,

however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any Party, (B) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege or which would require the disclosure of confidential information and (C) no Party shall be required to supply information which such party is under a legal obligation not to supply. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 8(k). If the party in possession of such Books and Records shall desire to dispose of any such Books and Records upon or prior to the expiration of such period, such party shall, prior to such disposition, give the other party a reasonable opportunity at such other party's expense, to segregate and remove such Books and Records as such other party may select.

9. BANKRUPTCY COURT APPROVAL.

(a) As soon as practicable, but in any event within five (5) business days after the Execution Date, Seller shall file and serve motions (the "*Motions*") pursuant to Bankruptcy Code Sections 105, 363, 365 and 1146, as applicable, in a form reasonably approved by counsel for Buyer:

(i) seeking entry of an order, on an expedited basis, substantially in the form attached hereto as Exhibit G (the "*Bid Procedures Order*"), among other things (A) approving the reimbursement of Buyer's out of pocket expenses (the "*Expense Reimbursement*") as administrative priority claims under Bankruptcy Code Sections 503(b) and 507(a), not to exceed \$150,000, which administrative claim shall automatically be deemed to be expunged, and shall not be paid or due to be paid from the \$600,000 purchase price, or from any monies received by Seller from the sale, unless the Court directs or otherwise orders that the sale be made to another higher or better offer made by a Qualified Bidder and Buyer is not the successful bidder herein; (B) approving the procedures for the sale of the Acquired Assets, including the requirement of an overbid amount of \$150,000 plus the Expense Reimbursement over the Purchase Price for bidders other than Buyer (the "*Overbid Amount Requirement*"), an incremental bid amount of \$50,000 (the "*Incremental Bid Amount*") and matching bid provisions, *provided that* any incremental bids made by Buyer shall be exempt from the Overbid Amount Requirement, so long as such incremental bid made by Buyer is at least \$5,000.00 more than any other offers made by any other Qualified Bidders; (C) setting dates for the auction sale of the Acquired Assets no later than January 31, 2017 (the "*Auction*"), and the hearing on the sale of the Acquired Assets no later than January 31, 2017; (D) providing that for any Person other than Buyer to be considered a qualifying bidder ("*Qualifying Bidder*"), such Person shall provide sufficient evidence to Seller of its financial ability to consummate a closing of the transactions contemplated hereby and such Person's bid shall (1) at a minimum, meet the Overbid Amount Requirement plus any applicable Incremental Bid Amount(s), (2) not be conditioned on the outcome of such bidder's due diligence with respect to the Acquired Assets that is not completed within three (3) days before the Auction, (3) not be conditioned on such bidder's ability to obtain financing, (4) provide as good as or better terms as contained in this Agreement, (5) be accompanied by a good faith deposit of \$175,000.00 in cash or certified or cashier's check payable to Seller, and (5) be in the form of this Agreement with any proposed changes to be redlined; and (E) providing that if Buyer is not the successful bidder at the Auction and Seller fails to consummate a closing with a Qualifying Bidder thereafter, Seller

shall give Buyer written notice ten (10) Business Days prior to decommissioning the Business or any material portion of Seller's network in order to allow Buyer and Seller to negotiate a purchase price and consummate a closing of the sale of the Acquired Assets and Business.

(ii) seeking entry of an order substantially in the form attached hereto as **Exhibit H** (the "**Sale Order**"), which, among other things, (A) authorizes Seller to sell, transfer and assign the Acquired Assets to Buyer pursuant to this Agreement and Bankruptcy Code Sections 105, 363, 365 and 1146, as applicable, free and clear of all Liens and Claims, except for Permitted Encumbrances; (B) determines that Buyer is a good faith purchaser under Section 363(m) of the Bankruptcy Code and that Buyer has acted in good faith, is a bona fide purchaser for value, and that the Purchase Price is fair and reasonable; (C) provides that the Assumed Agreements are assigned to Buyer pursuant to 11 U.S.C. § 365, that Buyer assumes no Liabilities for Claims or Cure Amounts under the Assumed Agreements except as specifically provided herein and that all Assumed Agreements are enforceable against the nondebtor parties; (D) pursuant to which Seller assumes any obligation to cure any unpaid obligations in respect to the Assumed Agreements listed on the Schedule of Assumed Agreements for the period between the Filing Date and Closing, at or before Closing; (E) provides that Section 1146(c) applies to the sale; and (F) is in all respects in a form acceptable to counsel for Buyer; and (vii) provides that the fourteen (14) day periods provided for in Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) are waived.

(b) Seller confirms that its negotiation of this Agreement with Buyer is critical to obtaining the highest and best price for their assets, and that without Buyer's commitment of substantial time and expense to the process, Seller would have to employ a less orderly process for the sale of its assets and therefore risk attracting lower prices. Seller acknowledges that Buyer would not have invested the time and incurred the expense of negotiating and documenting the transaction if it were not entitled to the Expense Reimbursement.

(c) Promptly after the filing of the Motions, Seller shall use best efforts to obtain a hearing thereon at the earliest available date after expiration of the applicable notice period. After filing the Motions, Seller shall not (without prior written consent of Buyer which consent shall not be unreasonably withheld) amend, modify or withdraw the Motions. Seller shall use best efforts to obtain, promptly, entry of a Sale Order, and Seller shall take all necessary actions in connection therewith. Seller shall provide due and sufficient notice of the hearing to be held in the Court regarding the Motions to: (i) each person or entity that has filed a notice of appearance, or that has otherwise filed a written request to receive copies of pleadings, in the Bankruptcy Case, (ii) the Internal Revenue Service, (iii) the Office of the United States Trustee, (iv) the taxing authorities for the State of New York and any appropriate political subdivisions of any thereof, (v) counsel to any official committee of creditors in the Bankruptcy Case, (vi) Buyer and its counsel, (vii) each party (other than Seller) to each Assumed Agreement, (viii) each person or entity that has asserted a Lien on, or in, any of the Acquired Assets, and (ix) Buyer and any other person or entity that Buyer reasonably requests in writing be served.

10. CONDITIONS TO CLOSING.

(a) Conditions to Obligation of Buyer. The obligation of Buyer to pay the Purchase Price and consummate the transactions to be performed by it in connection with Closing is subject to satisfaction, or waiver by Buyer at its sole discretion, of the following conditions:

(i) The representations and warranties of Seller set forth in Section 5 above shall be true and correct in all material respects at and as of the Closing Date, and the representations and warranties of Buyer set forth in Section 6 above shall be true and correct in all material respects at and as of the Closing Date;

(ii) The Sale Order, in all respects in a form reasonably acceptable to counsel for Buyer, has been entered by the Bankruptcy Court and shall have become a Final Order, unless the Sale Order expressly authorizes the sale and assignments before the expiration of 14 days after entry of the order under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d).

(iii) Seller shall have performed and complied with all of their covenants hereunder in all material respects through Closing;

(iv) There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement through Closing;

(v) Seller shall have delivered to Buyer all of Seller's Closing Documents, duly executed by Seller as applicable on or before the Closing Date;

(vi) All material actions, consents or approvals required to be obtained in connection with the consummation of the transactions contemplated by this Agreement or by the Transaction Documents, including without limitation from Governmental Authorities, shall have been obtained (copies of which shall have been delivered to Buyer) and be in full force and effect;

(vii) Seller shall continue to be a going concern as of the Closing Date;

(viii) All equipment material to the Business shall be in good working order;

(ix) The Board of Directors of Buyer shall have approved this Agreement on or prior to the hearing by the Court regarding the Motions;

(x) Each of Mark DuMoulin, Sr., Susan B. DuMoulin, Mark DuMoulin II, and Michael DuMoulin shall have entered into employment agreements with Buyer in substantially the form attached hereto as Exhibit I;

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(xi) Each of Seller and Hudson Owners, LLC ("*Hudson*") shall have executed and delivered a release of all claims against the other, such release to be in form and substance satisfactory to Buyer;

(xii) Hudson shall have executed and delivered to Buyer an amendment to the lease agreement between Seller and Hudson, which amendment shall provide for lease terms acceptable to Buyer, with such amendment to become effective upon Buyer's assumption of the lease;

(xiii) Buyer and N Plus shall have entered into an agreement whereby Buyer shall purchase, and N Plus shall assign to Buyer, all of N Plus's rights under that certain Colocation Agreement by and between N Plus and Deutsche Telekom North America Inc. which Colocation Agreement will then be terminated and replaced by a new Colocation Agreement between the Buyer and Deutsche Telekom North America;

(xiv) NFS shall have executed and delivered an agreement to terminate the equipment lease agreement between Seller and NFS, any UCC financing statements, and any other security interest in the Acquired Assets, in form and substance acceptable to Buyer; and

(xv) All circuit information, customer records, demarcation points and all other information necessary to the continued operation of the Seller's transport and colocation businesses shall have been transferred to Buyer.

(b) Conditions to Obligation of Seller. The obligation of Seller to consummate the transactions to be performed by it in connection with Closing is subject to satisfaction of the following conditions:

(i) The representations and warranties of Buyer set forth in Section 6 above shall be true and correct in all material respects at and as of the Closing Date;

(ii) The Sale Order, in all respects in a form reasonably acceptable to counsel for Seller, has been entered by the Bankruptcy Court and shall have become a Final Order, unless the Sale Order expressly authorizes the sale and assignments before the expiration of 14 days after entry of the order under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d);

(iii) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through Closing;

(iv) Buyer shall have delivered to NFS such amount as required pursuant to that termination of equipment lease agreement referenced in Section 10(a)(xiv) hereof such that any Lien of NFS on any Acquired Asset shall be released as of Closing;

(v) There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement;

(vi) Buyer shall have delivered to Seller all of Buyer's Closing Documents, duly executed by Buyer as applicable;

(vii) Each of Mark DuMoulin, Sr., Susan B. DuMoulin, Mark DuMoulin II, and Michael DuMoulin shall have been offered employment agreements with Buyer in substantially the form attached hereto as Exhibit I; and

(viii) All actions, consents or approvals required to be obtained from Governmental Authorities in connection with the consummation of the transactions contemplated by this Agreement or by the Transaction Documents shall have been obtained (copies of which shall have been delivered to Seller) and be in full force and effect, including the Sale Order from the Court (*provided that* the Sale Order states that it shall not be subject to any stay).

II. TERMINATION.

The parties may terminate this Agreement as provided below.

(a) At any time before the consummation and completion of the Closing, this Agreement may be terminated (i) by mutual written agreement of the parties hereto; (ii) by Buyer if (A) Closing has not occurred on or before January 31, 2017, or (B) any other condition set forth in Section 10 has become incapable of fulfillment or has not been satisfied on or before January 31, 2017; (iii) by Seller or Buyer if a bid or bids for the Acquired Assets by a purchaser other than Buyer is approved by the Court; (iv) by Buyer in the event of any material breach by Seller of any of Seller's agreements, representations or warranties contained herein; or (v) by Seller in the event of any material breach by Buyer of any of its agreements, representations or warranties contained herein.

(b) Effect of Termination. If this Agreement is terminated pursuant to clause (i) of paragraph (a), all obligations of the Parties shall terminate without liability of any party to the other. If the Agreement is terminated pursuant to clauses (ii) or (iv) of paragraph (a), Buyer shall be entitled to the return of the Security Deposit and such termination is without prejudice to any other rights Buyer may have with respect to any breach of any representation, warranty or covenant by Seller. If the Agreement is terminated pursuant to clause (iii) of paragraph (a), Buyer shall be entitled to the Expense Reimbursement and the return of the Security Deposit with accrued interest thereon (if the Security Deposit has been maintained in an interest-bearing account) and Buyer shall have no further liability whatsoever. If the Agreement is terminated pursuant to clause (v) of paragraph (a), Buyer shall forfeit the Security Deposit, which will become property of the Seller, Buyer shall not be entitled to the Expense Reimbursement, and Buyer's administrative claim for the Expense Reimbursement shall automatically be deemed to be expunged in its entirety.

(c) Notwithstanding the provisions of paragraph (a), if any of the conditions to Buyer's obligation to close are not satisfied, Buyer has the right to waive the unsatisfied conditions and proceed with the Closing, without prejudice to any rights Buyer may have with respect to any breach of representation, warranty or covenant by Seller.

12. MISCELLANEOUS.

(a) Survival of Representations and Warranties. The representations and warranties of the parties contained herein and in any of the other Transaction Documents shall survive until the end of the Transition Period.

(b) Transfer Taxes. Any federal, state, provincial or local transfer Taxes, including gains, transfer, conveyance, sales, documentary stamp and similar Taxes, payable as a result of the purchase and sale of the Acquired Assets, the assignment of Assumed Agreements or any other action contemplated by this Agreement shall be divided equally between Buyer and Seller, with each of Buyer and Seller paying fifty percent (50%) of any such Taxes. Buyer and Seller will cooperate in the preparation, execution and filing of all Tax Returns, questionnaires, applications or other like documents regarding any such Taxes.

(c) Expenses and Fees. Each party shall pay its own costs and expenses incident to the preparation and negotiation of this Agreement and the Transaction Documents, the consummation of the transactions contemplated hereby and thereby and its compliance with all its agreements and conditions contained herein or therein, including all legal and accounting fees and disbursements and all costs of obtaining necessary consents.

(d) Waiver. No terms or provisions hereof, including the terms and provisions contained in this sentence, shall be waived, modified or altered so as to impose any additional obligations or liability or grant any additional right or remedy, and no custom, payment, act, knowledge, extension of time, favor or indulgence, gratuitous or otherwise, or words or silence at any time, shall impose any additional obligation or liability or grant any additional right or remedy or be deemed a waiver or release of any obligation, liability, right or remedy except as set forth in a written instrument properly executed and delivered by the Party sought to be charged, expressly stating that it is, and the extent to which it is, intended to be so effective. No assent, express or implied, by either Party, or waiver by either Party, to or of any breach of any term or provision of this Agreement or of the Schedules shall be deemed to be an assent or waiver to or of such or any succeeding breach of the same or any other such term or provision.

(e) Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement prior to entry of a Sale Order without the prior written approval of the other Party; *provided, however,* that any Party may make any public disclosure it believes in good faith is required by applicable Law.

(f) No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the parties and their respective successors and permitted assigns.

(g) Entire Agreement; Amendment. This Agreement, the Exhibits and Schedules referred to herein and the Transaction Documents contain the entire understanding of the parties with respect to the subject matter contained herein or therein and supersede in their entirety all prior or concurrent oral or written agreements, offers, proposals and understandings

between the parties with respect to such subject matter. This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties; *provided, however*, that this Agreement may not be amended in any material manner after entry of a Sale Order without Court approval.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party; *provided, however*, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more Persons ("*Permitted Designees*") and (ii) designate one or more Permitted Designees to perform its obligations hereunder, in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder. In no event shall a Permitted Designee be an insider or Affiliate (as said terms are defined herein or in Section 101 of the Bankruptcy Code) of the Seller or of any creditors of the Seller, or any person or entity (as said terms are defined herein or in Section 101 of the Bankruptcy Code) that is or was doing business with the Seller, subleasing space from the Seller, or had any agreements (whether written or oral) with the Seller or any of the Seller's creditors as of the Filing Date, the Execution Date, or the Closing Date, other than as may be entered into by the Seller to obtain the Court's approval of this Agreement or to consummate the transactions contemplated by and under this Agreement.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(j) Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(k) Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given with respect to this Agreement shall be in writing and shall be delivered (charges prepaid, receipt confirmed or return receipt requested (if available)) by hand, by internationally and nationally recognized air courier service, or by registered, certified or express mail, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Notice shall be deemed given and effective (i) if delivered by hand or by internationally or nationally recognized air courier service when so delivered, or (ii) if sent by registered, certified or express mail, on the date of receipt (or on the date of attempted delivery if delivery is refused). Delivery by facsimile transmission or electronic mail shall not constitute notice under this Agreement.

If to Buyer:

Epsilon US, Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741

Attn: Jerzy Szlosarek

with a copy (which shall not constitute notice) in all events to:

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Attn: Andrew M. Ray, Esq.
Andrew J. Gallo, Esq.

If to Seller:

Metcom Network Services, Inc.
4250 Veterans Memorial Highway
Suite 3150 West
Holbrook, NY 11741
Attn: Mark DuMoulin, Sr.
Susan B. DuMoulin

with copies by email (which shall not constitute notice) in all events to:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attn: Neil Ackerman and Kamini Fox, Esq.
nackerman@ackermanfox.com
kfox@ackermanfox.com

Each Party may designate by notice in writing a new or additional address to which any notice, request, demand or communication may thereafter be so given, served or sent. Notices, requests, demands and other communications hereunder may be given by the attorney of any Party.

(l) Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF EXCEPT WHERE THE BANKRUPTCY CODE REQUIRES OTHERWISE. FOR THE DURATION OF THE PERIODS IN WHICH SELLER IS A DEBTOR OR DEBTOR-IN-POSSESSION IN THE BANKRUPTCY CASE, THE COURT WILL HAVE EXCLUSIVE JURISDICTION OVER ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND EACH PARTY AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH ACTION, SUIT OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER OR THAT THIS

AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT. EACH PARTY FURTHER IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH ACTION, SUIT OR PROCEEDING.

(m) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction; *provided, however*, that the Parties may agree to either terminate or amend this Agreement as necessary should such invalid or unenforceable term or provision be essential to the consummation of the transactions contemplated by this Agreement.

(n) Incorporation of Exhibits and Schedules. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

EPSILON US INC.

By: 
Name: JERRY SUSAREK.
Title: CEO

METCOM NETWORK SERVICES, INC.

By: _____
Name:
Title:

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

EPSILON US INC.

By: _____
Name:
Title:

METCOM NETWORK SERVICES, INC.

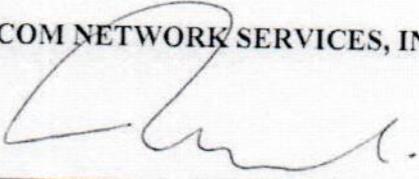
By: 
Name: Mark Dumoulin
Title: President

EXHIBIT A

Bill of Sale, Assignment and Assumption Agreement

EXECUTION VERSION

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Bill of Sale") is made as of January __, 2017 by and between Epsilon US Inc., a Delaware corporation ("Buyer") and Metcom Network Services, Inc., a New York corporation ("Seller") and, together with Buyer, the "Parties"). Unless otherwise defined herein, capitalized terms are used herein as defined in the Asset Purchase Agreement, dated as of January 10, 2017, by and between Seller and Buyer (the "Asset Purchase Agreement").

WHEREAS, pursuant to the Asset Purchase Agreement, Buyer has agreed to purchase the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller has agreed to sell the Acquired Assets and transfer the Assumed Liabilities to Buyer; and), and Buyer's bid for the Acquired Assets was approved by Bankruptcy Court Order dated January __, 2017, after notice and hearing; and

WHEREAS, Seller is executing and delivering this Bill of Sale for the purpose of conveying, selling, transferring, assigning and delivering to Buyer all of Seller's right, title, and interest in and to the Acquired Assets, and Buyer is executing and delivering this Bill of Sale in order to confirm to Seller the assumption by Buyer of the Assumed Liabilities.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the Asset Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Seller hereby grants, sells, conveys, assigns, transfers and delivers to Buyer free and clear of all Liens (other than Permitted Encumbrances) Seller's right, title, and interest in and to the Acquired Assets.

2. Buyer hereby assumes and shall hereafter perform, pay, and discharge the Assumed Liabilities, when due.

3. Except as set forth in the Asset Purchase Agreement, nothing in this Bill of Sale shall confer any rights upon any person other than the Parties and their respective successors and permitted assigns.

4. Neither the making nor the acceptance of this Bill of Sale shall enlarge, restrict, or otherwise modify the terms of the Asset Purchase Agreement or constitute a waiver or release by Seller or Buyer of any liabilities, duties, or obligations imposed upon either of them by the terms of the Asset Purchase Agreement.

5. This Bill of Sale shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the Parties.

6. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of laws principles thereof except where the Bankruptcy Code requires otherwise. For the duration of the periods in which Seller is a

debtor or debtor-in-possession in the Bankruptcy Case, the Court will have exclusive jurisdiction over any disputes arising out of or relating to this Bill of Sale, and each Party agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit or proceeding, any claim that it is not personally subject to the jurisdiction of such Court in an inconvenient forum, that the venue of the action, suit or proceeding is improper or that this Bill of Sale or the subject matter hereof may not be enforced in or by such Court. Each party further irrevocably submits to the jurisdiction of any such Court in any such action, suit or proceeding.

* * * * *

IN WITNESS WHEREOF, this Bill of Sale has been signed by each of the Parties hereto on the date first written above.

SELLER:

METCOM NETWORK SERVICES, INC.

By: _____

Name:

Title:

BUYER:

EPSILON US INC.

By: _____

Name:

Title:

EXHIBIT B

Escrow Agreement

EXECUTION VERSION

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "**Escrow Agreement**"), is entered into as of January , 2017, by and among Epsilon US Inc., a Delaware corporation ("**Buyer**"), Metcom Network Services, Inc., a New York corporation ("**Seller**"), and Ackerman Fox, LLP, a Law Firm, as escrow agent (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement (as defined below).

RECITALS

- A. Buyer has delivered an executed Asset Purchase Agreement, dated as of or around the date hereof (the "**Agreement**").
- B. The Bid Procedures Order and Section 3(a) of the Agreement requires the Buyer to deposit with the Escrow Agent an amount equal to \$131,000 (the "**Deposit**"), such funds (the "**Escrow Funds**") to be held and disbursed by the Escrow Agent in accordance with the terms of this Escrow Agreement.
- C. Schedule I to this Escrow Agreement sets forth the wire transfer instructions of Buyer and Seller.¹

AGREEMENT

In consideration of the mutual covenants of the parties hereto set forth in this Escrow Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Agent. Seller and Buyer hereby appoint and designate the Escrow Agent as escrow agent for the purposes set forth herein and the Escrow Agent hereby accepts such appointment and agrees to accept, hold and disburse the Escrow Funds in accordance with the terms hereof. All references to the "**Escrow Agent**," as that term is used herein, shall refer to the Escrow Agent solely in its capacity as such, and not in any other capacity whatsoever, whether as individual, agent, fiduciary, trustee or otherwise. The Escrow Agent shall have no obligation to assure or participate in the enforcement or performance of the Agreement whether or not the Escrow Agent shall have knowledge or notice of the terms thereof, or any acts or omissions relating thereto.

2. Deposit of Escrow Amount. Pursuant to the terms of the Bid Procedures Order, on the date hereof, Buyer hereby deposits with the Escrow Agent, by wire transfer of immediately available funds, and the Escrow Agent hereby acknowledges receipt of, the Deposit, to be held and disbursed by the Escrow Agent as set forth herein. Subject to the provisions of **Section 3**, the Escrow Funds shall be deposited by the Escrow Agent into the Metcom/Epsilon Sale Escrow Account (the "**Escrow Account**") maintained by the Escrow Agent and shall be

¹ WIRE TRANSFER INSTRUCTIONS TO BE PROVIDED ASAP; IT WILL BE A SEPARATE "SUB-ESCROW" ACCOUNT ATTACHED TO ACKERMAN FOX, LLP'S MAIN ESCROW ACCOUNT AT CITIBANK, N.A. IN EAST MEADOW, NY.

maintained in such Escrow Account until the distribution of the Escrow Funds in accordance with the terms hereof.

3. Investment of Escrow Funds. The parties agree that the Escrow Funds will not be deposited into an interest-bearing account and shall not accrue any interest. The Escrow Agent may invest and reinvest the Escrow Funds from time to time only if directed in writing jointly by both Buyer and Seller. If no such joint written instructions are received, the Escrow Funds will remain uninvested and therefore shall not earn interest. The Escrow Agent shall have no authority to invest the Escrow Funds in any other obligations or investments except as provided in this **Section 3**. Neither Buyer, on the one hand, nor Seller, on the other hand, makes any express or implied representation or warranty with respect to any insurance of any amounts on deposit in the Escrow Funds.

(a) The parties hereto recognize and agree that the Escrow Agent will not provide supervision, recommendations, or advice relating to either the investment of moneys held in the Escrow Account or the purchase, sale, retention, or other disposition of any permitted investment.

(b) The Escrow Agent is hereby authorized to execute purchases and sales of permitted investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent shall send statements to each of the parties hereto on a monthly basis reflecting activity in the Escrow Account for the preceding month. Although each of the parties hereto recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the parties hereto hereby agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for the Escrow Account if no activity occurred for such month.

(c) The parties hereto acknowledge and agree that the delivery of the Escrow Funds is subject to the sale and final settlement of permitted investments. Proceeds of a sale of permitted investments will be delivered on the business day on which the appropriate instructions are delivered to the Escrow Agent if received prior to the deadline for same day sale of such permitted investments. If such instructions are received after the applicable deadline, proceeds will be delivered on the next succeeding business day.

4. Tax Matters.

(a) Reporting of Income. Buyer and Seller agree that, for Tax reporting purposes, all Taxable interest on or other income, if any, attributable to the Escrow Funds shall be allocable to Buyer.

(b) Preparation and Filing of Tax Returns. Any tax returns required to be prepared and filed will be prepared and filed by Buyer with the Internal Revenue Service in all years income is earned, whether or not income is received or distributed in any particular tax year, and the Escrow Agent shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned by the Escrow Account.

(c) Payment of Taxes. Any taxes payable on income earned from the investment of any sums held in the Escrow Account shall be paid by Buyer, whether or not the income was distributed by the Escrow Agent during any particular year and to the extent required under the provisions of the Internal Revenue Code of 1986 (the “Code”).

(d) Unrelated Transactions. The Escrow Agent shall have no responsibility for the preparation and/or filing of any tax information return with respect to any transaction, whether or not related to this Escrow Agreement, that occurs outside the Escrow Funds.

5. Distributions and Payments.

(a) The Escrow Agent shall retain the Escrow Funds in the Escrow Account until it is presented with a joint written instruction executed by Seller and Buyer (a “**Joint Written Instruction**”) or a written order of the Bankruptcy Court or the United States District Court for the Southern District of New York, as applicable, directing any disbursement of the Escrow Funds to Seller and/or Buyer, or after a Closing of the sale to Buyer under an Order issued by the Bankruptcy Court, into a separate escrow account for Seller’s Bankruptcy Estate, or as otherwise directed by the Bankruptcy Court (a “**Court Order**”). The Escrow Agent shall receive and may conclusively rely upon an opinion of counsel to the effect that such Court Order is final, non appealable and from a court of competent jurisdiction. Upon receipt of such instructions or order, the Escrow Agent shall disburse the amount of the Escrow Funds specified in such notice or order by wire transfer of immediately available funds as directed in such notice or order. There may be more than one such notice.

(b) Other than pursuant to the terms expressly set forth herein, the Escrow Agent shall make such distributions from the Escrow Funds to Seller or Buyer only as shall be specified in a Joint Written Instruction delivered to the Escrow Agent.

(c) Any distribution required to be made by the Escrow Agent under this Escrow Agreement shall be made by the Escrow Agent promptly upon liquidation of any investment required for such distribution.

6. Rights, Obligations and Indemnification of the Escrow Agent.

(a) In performing any of its duties under this Escrow Agreement, or upon the claimed failure to perform its duties hereunder, the Escrow Agent shall not be liable to anyone for any damages, losses, or expenses that such party may incur as a result of the Escrow Agent so acting or failing to act; provided that the Escrow Agent shall be liable for damages arising out of its fraud, gross negligence, or willful misconduct under this Escrow Agreement. Accordingly, the Escrow Agent shall not incur any such liability with respect to: (i) any action taken or omitted to be taken in good faith and without fraud, gross negligence, or willful misconduct; or (ii) any action taken or omitted to be taken in reliance (including reliance not only as to a document’s due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein) upon any document, including any written notice, request or instruction provided for in this Escrow Agreement, that the Escrow

Agent shall in good faith believe to be genuine without inquiry and without requiring substantiating evidence of any kind, to have been signed or presented by a proper Person or Persons and to conform with the provisions of this Escrow Agreement. Concurrently with the execution of this Escrow Agreement, Buyer and Seller shall deliver to the Escrow Agent **Exhibit A-1** and **Exhibit A-2** which contain an authorized signer designation in Part A thereof. The Escrow Agent shall have no liability for loss arising from any cause beyond its control, including, but not limited to, the following: (x) the act, failure or neglect of any agent or correspondent selected by Seller or Buyer for the remittance of funds; (y) any delay, error, omission or default of any communication by any Person other than the Escrow Agent; or (z) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers.

(b) Buyer, on the one hand, and Seller, on the other hand, each hereby agree to indemnify and hold the Escrow Agent and its parent, affiliates, directors, officers, agents and employees (collectively, the “**Escrow Agent Indemnitees**”) harmless from and against one-half (½) of any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket, incidental expenses and reasonable legal fees and expenses (collectively, “**Losses**”) that may be imposed on, incurred by, or asserted against, the Escrow Agent Indemnitees or any of them for following any instruction or other direction upon which the Escrow Agent is authorized to rely pursuant to the terms of this Escrow Agreement; provided that the Escrow Agent has not acted with gross negligence or engaged in fraud or willful misconduct. In addition to and not in limitation of the immediately preceding sentence, Buyer, on the one hand, and Seller, on the other hand, each hereby also covenant and agree to indemnify and hold the Escrow Agent Indemnitees and each of them harmless from and against one-half (½) of all Losses that may be imposed on, incurred by, or asserted against the Escrow Agent Indemnitees or any of them in connection with or arising out of the Escrow Agent’s performance under this Escrow Agreement (including any action taken by the Escrow Agent in accordance with **Section 6(i)**); provided, however, that such indemnity shall not apply to any Losses finally adjudicated to have been directly caused by the Escrow Agent’s fraud, gross negligence or willful misconduct. The provisions of this **Section 6(b)** shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent for any reason.

(c) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document between the other parties hereto, in connection herewith, including, without limitation, the Agreement. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES THAT HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT’S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (II) ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL

LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(d) If any part of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or if the payment or transfer of any such funds shall be stayed or enjoined by any court order, or any order, judgment, or decree shall be made or entered by any court affecting such funds or any portion thereof, then in any of such events, the Escrow Agent (i) shall provide Buyer and Seller with prompt written notice of any such events and (ii) is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel is binding upon it. If the Escrow Agent complies with the preceding sentence and any such order, writ, judgment, or decree, it shall not be liable to Buyer, Seller or any other Person by reason of such compliance, even though such order, writ, judgment, or decree may subsequently be reversed, modified, annulled, set aside, or vacated.

(e) Except as specifically provided in **Section 3** of this Escrow Agreement, the Escrow Agent shall have no responsibility for the investment of any funds held hereunder. The Escrow Agent shall not be liable to Seller or Buyer and hereby disclaims any responsibility for any losses or penalties incurred with respect to any such investments.

(f) Subject to the terms hereof, the Escrow Agent may resign without obtaining the order of any court by giving at least thirty (30) calendar days prior written notice to Seller and Buyer of the Escrow Agent's intent to resign and, upon the taking of all the actions as described in this **Section 6(f)** by the Escrow Agent, the Escrow Agent shall have no further responsibilities hereunder to Seller or Buyer or to any other Person in connection with this Escrow Agreement. Such resignation shall be effective upon the appointment by Seller and Buyer of a successor escrow agent, which shall be a bank or other financial institution having capital and surplus of at least \$500,000,000, or as otherwise agreed upon in writing by Seller and Buyer (a "**Qualified Successor Agent**"). Any such Qualified Successor Agent shall be appointed (which appointment shall be made without delay) by a written instrument, mutually satisfactory to, and executed by, Seller, Buyer, and the Qualified Successor Agent, and the Escrow Agent shall execute an assignment by the Escrow Agent of the Escrow Funds to the Qualified Successor Agent. Any Qualified Successor Agent appointed under the provisions of this Escrow Agreement shall have all of the same rights, powers, privileges, immunities, and authority with respect to the matters contemplated herein as are granted herein to the original Escrow Agent and thereafter such Qualified Successor Agent shall be the Escrow Agent hereunder. If Seller and Buyer have failed to appoint a Qualified Successor Agent prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation or removal, the Escrow Agent may appoint a Qualified Successor Agent or petition any court of competent jurisdiction for the appointment of a Qualified Successor Agent or for other appropriate relief, provided that such successor escrow agent must be a Qualified Successor Agent. Any such resulting appointment shall be binding upon all of the parties hereto and thereafter such successor escrow agent shall be the Escrow Agent hereunder.

(g) It is not the intention of the parties hereto to create, nor shall this Escrow Agreement be construed as creating, a partnership or association, or to render the parties hereto liable as partners.

(h) Notwithstanding any provision herein to the contrary, in the event (i) of any disagreement or controversy arising under this Escrow Agreement, (ii) conflicting demands or notices are made upon the Escrow Agent arising out of or relating to this Escrow Agreement, or (iii) the Escrow Agent in good faith is in doubt as to what action it should take hereunder, the Escrow Agent shall have the right, at its election, to withhold and stop all further proceedings in, and performance of, this Escrow Agreement and all instructions received hereunder and file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring all parties involved to interplead and litigate in such court their claims and rights among themselves and with the Escrow Agent. Should any suit or legal proceeding be instituted arising out of or related to this Escrow Agreement, whether such suit be initiated by the Escrow Agent or others, the Escrow Agent shall have the right, at its option, to stop all further proceedings under and performance of this Escrow Agreement and of all instructions received hereunder until all differences shall have been rectified and all doubts resolved by agreement or until the rights of all parties shall have been fully adjudicated.

(i) The Escrow Agent shall have the right to perform any of its duties hereunder through agents, attorneys, custodians, or nominees.

(j) The Escrow Agent shall have the right, but not the obligation, to consult with counsel of its choice and shall not be liable for any action taken or omitted to be taken by the Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent.

(k) The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God, earthquakes, fire, flood, wars, acts of terrorism, civil or military disturbances, sabotage, epidemic, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services, accidents, labor disputes, acts of civil or military authority or governmental action, it being understood that the Escrow Agent shall use commercially reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

7. Fees. Buyer, on the one hand, and Seller, on the other hand, shall each be liable for one-half (1/2) of the fees and expenses of the Escrow Agent as described in **Exhibit B** attached hereto for so long as any portion of the Escrow Funds is held by the Escrow Agent hereunder. The Escrow Agent shall have, and is hereby granted, a prior lien upon any property, cash, or assets of the Escrow Account, with respect to its unpaid fees, non-reimbursed expenses, and unsatisfied indemnification rights, superior to the interests of any other Persons or entities. The Escrow Agent shall be entitled to and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from amounts on deposit in the Escrow Account.

8. Notices and Instructions. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

(a) If to Seller:

Metcom Network Services, Inc.
4250 Veterans Memorial Highway
Suite 3150 West
Holbrook, NY 11741
Attn: Mark DuMoulin, Sr.
Susan B. DuMoulin
Phone: 631-918-4000
Fax:
Email: mark@metcom.com
susanb@metcom.com

With a copy (which shall not constitute notice) by email to:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attention: Neil Ackerman
Kamini Fox, Esq.
Phone: 516-425-5365
Fax: 516-228-3396
E-mail: nackerman@ackermanfox.com
kfox@ackermanfox.com

(b) If to Buyer:

Epsilon US, Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741

Attention: Jerzy Szlosarek
Phone:

Fax:
Email:

With a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius, LLP
111 Pennsylvania Avenue, NW
Washington, DC 20004
Attention: Andrew M. Ray, Esq.
Andrew J. Gallo, Esq.
Phone: (202) 373-6585
Fax: (202) 373-6001
Email: andrew.ray@morganlewis.com
andrew.gallo@morganlewis.com

(c) If to the Escrow Agent:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attention: Neil Ackerman
Kamini Fox, Esq.
Phone: 516-425-5365
Fax: 516-228-3396
E-mail: nackerman@ackermanfox.com
kfox@ackermanfox.com

Account statements shall be sent via first class mail and/or email to the parties in accordance with this **Section 8**.

9. Entire Agreement. This Escrow Agreement and, as between Buyer and Seller, the Agreement, set forth the entire understanding of the parties hereto, and supersede and preempt all prior oral or written understandings and agreements with respect to the subject matter hereof, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

10. Governing Law. This Escrow Agreement shall be governed by the law of the State of New York, without regard to any principles of conflicts of laws that would result in the applicable of the laws of any other jurisdiction, in all respects, except to the extent that the laws of the State of New York are superseded by the Bankruptcy Code.

11. Consent to Jurisdiction; Forum Selection; Waiver of Jury Trial.

(a) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS ESCROW AGREEMENT SHALL BE TRIED AND LITIGATED EXCLUSIVELY IN THE BANKRUPTCY COURT. THE AFOREMENTIONED CHOICE OF VENUE IS INTENDED BY THE PARTIES TO BE MANDATORY AND NOT

PERMISSIVE IN NATURE, THEREBY PRECLUDING THE POSSIBILITY OF LITIGATION BETWEEN THE PARTIES WITH RESPECT TO OR ARISING OUT OF THIS ESCROW AGREEMENT IN ANY JURISDICTION OTHER THAN THOSE SPECIFIED IN THIS **SECTION 11**. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THE CHAPTER 11 CASE HAS BEEN FULLY AND FINALLY DISMISSED AND THE BANKRUPTCY COURT DECLINES JURISDICTION, THE PARTIES AGREE TO AND HEREBY UNCONDITIONALLY AND IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON-CONVENIENS OR SIMILAR DOCTRINE OR TO OBJECT TO VENUE WITH RESPECT TO ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS **SECTION 11**, AND STIPULATES THAT THE COURTS PROVIDED IN THIS **SECTION 11** SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER SUCH PARTY FOR THE PURPOSE OF LITIGATING ANY DISPUTE, CONTROVERSY OR PROCEEDING ARISING OUT OF OR RELATED TO THIS ESCROW AGREEMENT. EACH PARTY HEREBY AUTHORIZES AND ACCEPTS SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST IT AS CONTEMPLATED BY THIS **SECTION 11** BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, TO ITS ADDRESS FOR THE GIVING OF NOTICES AS SET FORTH IN THIS ESCROW AGREEMENT, OR IN THE MANNER SET FORTH IN **SECTION 8** OF THIS ESCROW AGREEMENT FOR THE GIVING OF NOTICE.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS ESCROW AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO. THE PARTIES HERETO EACH AGREE THAT ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION SHALL BE TRIED BY THE COURT WITHOUT A JURY. EACH OF THE PARTIES HERETO FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY SUCH LEGAL PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LEGAL PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

12. Severability. The unenforceability or invalidity of any provision of this Escrow Agreement shall not affect the enforceability or validity of any other provision.

13. Amendment and Waiver. This Escrow Agreement may be amended, or any provision of this Escrow Agreement may be waived; provided that (a) any such amendment or waiver will be binding on Buyer only if such amendment or waiver is set forth in a writing executed by Buyer, (b) any such amendment or waiver will be binding on the Escrow Agent only if such amendment or waiver is set forth in a writing executed by the Escrow Agent, and (c) any such amendment or waiver will be binding upon Seller only if such amendment or waiver is set forth in a writing executed by Seller. The waiver of any provision or breach of this Escrow Agreement shall not operate or be construed as a waiver of any other provision or breach.

14. Headings. The subject headings of Sections of this Escrow Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions.

15. Successors and Assigns. All covenants and agreements contained in this Escrow Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise provided herein, this Escrow Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto.

16. Successor Escrow Agent by Merger. Notwithstanding anything contained herein to the contrary, any entity into which the Escrow Agent may be merged or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all of the Escrow Agent's rights obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of the parties hereto, anything herein to the contrary notwithstanding.

17. Recitals; Not an Amendment. The Recitals set forth above are hereby incorporated herein by reference. This Escrow Agreement is not intended to amend or supersede any provision of the Agreement.

18. Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

19. Electronic Delivery. This Escrow Agreement and any amendments hereto, to the extent signed and delivered by means of portable document format by electronic mail, shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms hereof and deliver them to all other parties hereto. No party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature, or the fact that any signature was transmitted or communicated through the use of a facsimile machine or other electronic transmission, as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

20. Termination. This Escrow Agreement shall terminate upon final disbursement of the Escrow Funds in accordance with the terms hereof.

21. Assignment of Interests. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and acknowledged by the Escrow Agent.

22. Security Procedure for Funds Transfer. The Escrow Agent shall confirm each funds transfer instruction received in the name of a party by means of the security procedure selected by such party and communicated to the Escrow Agent in the form of **Exhibit A-1** and **A-2** attached hereto, which upon receipt by the Escrow Agent shall become a part of this Escrow Agreement. Once delivered to the Escrow Agent, **Exhibit A-1** and **A-2** may be revised or rescinded only by a writing signed by an authorized representative of the party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent reasonable opportunity to act on it. If a revised **Exhibit A-1** or **A-2** or a rescission of an existing **Exhibit A-1** or **A-2** is delivered to the Escrow Agent by an entity that is a successor-in-interest to a party, such document shall be accompanied by additional documentation reasonably satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the party under this Escrow Agreement. The parties understand that the Escrow Agent's inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such party may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

[Signature Page Follows]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

SELLER:

METCOM NETWORK SERVICES, INC.

By: _____
Name:
Title:

[SIGNATURE PAGE TO ESCROW AGREEMENT]

BUYER:

EPSILON US INC.

By: _____
Name:
Title:

ESCROW AGENT:

ACKERMAN FOX, LLP,
as Escrow Agent

By: _____
Name:
Title:

[SIGNATURE PAGE TO ESCROW AGREEMENT]

EXHIBIT A-1

Buyer Security Procedure

Buyer hereby certifies that the names, titles, telephone numbers, e-mail addresses, and specimen signatures set forth below identify the persons authorized to provide direction and initiate or confirm transactions, including, but not limited to, funds transfer instructions, on behalf of Buyer, and that the option checked in Part C of this Exhibit A-1 is the security procedure selected by Buyer for use in verifying that a funds transfer instruction received by the Escrow Agent is that of Buyer.

Buyer has reviewed each of these security procedures and has determined that the option checked in Part C of this Exhibit A-1 best meets its requirements; given the size, type, and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part C of this Exhibit A-1, Buyer acknowledges that it has elected to not use the other security procedures described below and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by Buyer.

NOTICE: The security procedure selected by Buyer will not be used to detect errors in the funds transfer instructions given by Buyer. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that Buyer take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part A

Name, Title, Telephone Number, E-mail Address, and Specimen Signature for person(s) designated to provide direction, including, but not limited to, funds transfer instructions, and to otherwise act on behalf of Buyer.

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____

Part B

Name, Title, Telephone Number, and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____

Part C

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part B above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts A and B of this Exhibit.

CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail.

Dated this ____ day of _____, 2017.

EPSILON US INC.

By: _____

Name: _____

Title: _____

EXHIBIT A-2

Seller Security Procedure

Seller hereby certifies that the names, titles, telephone numbers, e-mail addresses, and specimen signatures set forth below identify the persons authorized to provide direction and initiate or confirm transactions, including, but not limited to, funds transfer instructions, on behalf of Sellers, and that the option checked in Part C of this Exhibit A-2 is the security procedure selected by Seller for use in verifying that a funds transfer instruction received by the Escrow Agent is that of Seller.

Seller has reviewed each of these security procedures and has determined that the option checked in Part C of this Exhibit A-2 best meets its requirements; given the size, type, and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part C of this Exhibit A-2, Seller acknowledges that it has elected to not use the other security procedures described below and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by Seller.

NOTICE: The security procedure selected by Seller will not be used to detect errors in the funds transfer instructions given by Seller. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that Seller take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part A

Name, Title, Telephone Number, E-mail Address, and Specimen Signature for person(s) designated to provide direction, including, but not limited to, funds transfer instructions, and to otherwise act on behalf of Sellers.

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part B

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____

Part C

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part B above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts A and B of this Exhibit.

CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail.

Dated this ____ day of _____, 2017.

METCOM NETWORK SERVICES, INC.

By: _____

Name: _____

Title: _____

Exhibit B

[To be provided by Escrow Agent]

Schedule I

Wire Transfer Instructions

Buyer Wire Instructions:

Account Name: _____

Bank: _____

ABA #: _____

Account #: _____

Seller Wire Instructions:

Destination Bank:

Routing #:

Account #:

Bank Mailing Address:

Beneficiary Info:

EXHIBIT C

Bill of Sale, Assignment and Assumption Agreement

See Exhibit A.

EXHIBIT D

Certificate of Seller

EXECUTION VERSION

CLOSING CERTIFICATE

January __, 2017

Reference is hereby made to that certain Asset Purchase Agreement (the "**Purchase Agreement**"), dated as of January 10, 2017, by and among EPSILON US INC., a Delaware corporation (the "**Buyer**"), and METCOM NETWORK SERVICES, INC., a New York corporation (the "**Seller**"). Capitalized terms used but not defined in this certificate shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to Section 4(b) of the Purchase Agreement, the undersigned, [____], the [____] of the Seller, does certify solely in his capacity as [____] of the Seller and not in any individual capacity that:

(a) Each of the representations and warranties set forth in Article V of the Purchase Agreement are true and correct as of the date hereof as if made anew of the date hereof (except to the extent any such representation and warranty expressly relates to an earlier date (in which case is true and correct as of such earlier date)), except where any failure of any such representation and warranty to be true and correct would not have a material adverse effect on Seller's ability to perform the transactions contemplated by the Purchase Agreement.

(b) The Seller has performed in all material respects all of their covenants and agreements under the Purchase Agreement that are required to be performed by it at or prior to the Closing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

SELLER:

METCOM NETWORK SERVICES, INC.

By: _____

Name:

Title:

[Signature Page to Seller Closing Certificate]

EXHIBIT E

Certificate of Buyer

EXECUTION VERSION

CLOSING CERTIFICATE

January __, 2017

Reference is hereby made to that certain Asset Purchase Agreement (the "**Purchase Agreement**"), dated as of January 10, 2017, by and among EPSILON US INC., a Delaware corporation (the "**Buyer**"), and METCOM NETWORK SERVICES, INC., a New York corporation (the "**Seller**"). Capitalized terms used but not defined in this certificate shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to Section 4(c) of the Purchase Agreement, the undersigned, [____], the [____] of the Buyer, does certify solely in his capacity as [____] of the Buyer and not in any individual capacity that:

(a) Each of the representations and warranties set forth in Article VI of the Purchase Agreement are true and correct as of the date hereof as if made anew of the date hereof (except to the extent any such representation and warranty expressly relates to an earlier date (in which case is true and correct as of such earlier date)), except where any failure of any such representation and warranty to be true and correct would not have a material adverse effect on Buyer's ability to perform the transactions contemplated by the Purchase Agreement.

(b) The Buyer has performed in all material respects all of their covenants and agreements under the Purchase Agreement that are required to be performed by it at or prior to the Closing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

BUYER:

EPSILON US INC.

By: _____
Name:
Title:

[Signature Page to Buyer Closing Certificate]

EXHIBIT F

Non-Competition Agreement

EXECUTION VERSION

NONCOMPETITION AGREEMENT (SELLER)

This NONCOMPETITION AGREEMENT (SELLER) (this "Agreement") is made as of this __ day of January, 2017 (the "Effective Date"), by and between EPSILON US INC., a Delaware corporation ("Buyer"), and METCOM NETWORK SERVICES, INC., a Delaware corporation ("Seller").

WITNESSETH:

WHEREAS, Buyer and Seller are parties to that certain Asset Purchase Agreement, dated as of January 10, 2017, by and among Buyer and Seller (the "Purchase Agreement"), pursuant to which Seller has agreed to sell to Buyer substantially all of the assets of the Business (as defined in the Purchase Agreement), and Buyer's bid for the Acquired Assets was approved by Bankruptcy Court Order dated January __, 2017, after notice and hearing; and

WHEREAS, the parties desire to enter into this Agreement to establish that Seller will not compete with Buyer in the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Definitions. Capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

**ARTICLE II
NONCOMPETITION**

Section 2.01 Competing Business. Subject to the provisions of Sections 2.02 and 2.03 hereof, for a period of 5 years commencing on the Effective Date (the "Term") Seller shall not (i) provide internet access, web hosting and communications services, or (ii) directly or indirectly engage in, or have any equity ownership in, or participate in the financing, operation or management of any firm, corporation or business that engages in, the business of providing internet access, interconnection, cross connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business (the activities described in clauses (i) and (ii) collectively, the "Competing Business").

Section 2.02 Acquired Business. Subject to the limitations and exceptions set forth herein, the provisions of Section 2.01 shall prohibit the acquisition by Seller or any of its Subsidiaries of all or any part of a business or Person (whether through the acquisition of assets, securities or other ownership interests, the effecting of a merger, consolidation, share exchange,

business combination, reorganization or recapitalization or other similar transaction) (an "Acquired Business") that is engaged in a Competing Business.

Section 2.03 Termination.

(a) This Agreement shall terminate and be of no further force or effect upon the expiration of the Term.

(b) Effect of Termination. Upon termination, this Agreement shall forthwith become void and of no further force or effect, except for the following provisions, which shall remain in full force and effect: (i) this Section 2.03, and (ii) Sections 3.08, 3.10, 3.11 and 3.12, and except that any and all claims arising prior to such termination shall survive such termination.

**ARTICLE III
MISCELLANEOUS**

Section 3.01 Notices. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by facsimile transmission, air courier or registered or certified mail, return receipt requested, addressed as follows:

if to Seller:

Metcom Network Services, Inc.
4250 Veterans Memorial Highway
Suite 3150 West
Holbrook, NY 11741
Attn: Mark DuMoulin, Sr.
Susan B. DuMoulin
Phone:
Fax:
Email:

with copies (which shall not constitute notice) by email to:

Ackerman Fox, LLP
90 Merrick Avenue, Suite 400
East Meadow, New York 11554
Attn: Neil Ackerman and Kamini Fox, Esq.
Phone:
Fax:
Email: nackerman@ackermanfox.com
kfox@ackermanfox.com

if to Buyer:

Epsilon US Inc.

New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek
Phone:
Fax:
Email:

with a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius, LLP
111 Pennsylvania Avenue, NW
Washington, DC 20004
Attention: Andrew M. Ray, Esq.
Andrew J. Gallo, Esq.
Phone: (202) 373-6585
Fax: (202) 373-6001
Email: andrew.ray@morganlewis.com
andrew.gallo@morganlewis.com

or to such other address as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been delivered (a) when delivered, if delivered personally, (b) when sent (with written confirmation received), if sent by facsimile transmission on a Business Day, (c) on the first Business Day after dispatch (with written confirmation received), if sent by facsimile transmission on a day other than a Business Day, (d) on the second Business Day after dispatch, if sent by air courier, and (e) on the fifth Business Day after mailing, if sent by mail.

Section 3.02 Assignment. No party shall have a right to assign this Agreement or delegate any of its rights, interests, duties or obligations hereunder without the prior written consent of the other party (which consent may be granted in such party's sole discretion); provided, however, that any party may assign this Agreement to any of its Affiliates without the prior written consent of the other parties; and provided, further that no such assignment of this Agreement shall relieve the assignor of any of its obligations or liabilities under this Agreement. Notwithstanding the foregoing, any party may assign this Agreement without the other party's prior written consent in connection with the transfer or sale of all or substantially all of its assets or business or its merger or consolidation with another Person upon written notice to the other party. Any attempted assignment in violation of this Section 3.02 shall be void.

Section 3.03 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 3.04 Amendments. This Agreement shall not be modified, amended or supplemented except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

Section 3.05 No Waiver. The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege conferred in this Agreement, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

Section 3.06 Counterparts. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures of each of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument. Each party may execute this Agreement on a facsimile of the Agreement. In addition, facsimile signatures of authorized signatories of either party shall be valid and binding and delivery of a facsimile signature by either party shall constitute due execution and delivery of this Agreement.

Section 3.07 Interpretation. The article and section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. As used in this Agreement, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and singular shall include the plural. Unless the context otherwise requires, the term "party" when used herein means a party hereto. References herein to a party or other Person include their respective successors and assigns. The words "include," "includes" and "including" when used herein shall be deemed to be followed by the phrase "without limitation" unless such phrase otherwise appears. Unless the context otherwise requires, references herein to Articles and Sections shall be deemed references to Articles and Sections of this Agreement. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision hereof. With regard to each and every term and condition of this Agreement, the parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject thereto, no consideration shall be given to the issue of which party actually prepared, drafted or requested any term or condition of this Agreement.

Section 3.08 Governing Law. This Agreement shall be governed by the law of the State of New York, without regard to any principles of conflicts of laws that would result in the applicable of the laws of any other jurisdiction, in all respects, except to the extent that the laws of the State of New York are superseded by the Bankruptcy Code.

Section 3.09 Unenforceability. If in any judicial proceeding, a court shall refuse to enforce any of the covenants contained herein (or any part thereof), then with respect to such unenforceable covenant (or part thereof) such court is hereby authorized and directed to reform such provision to the maximum time, scope or geographical limitation, as the case may be, permitted by applicable Law, but in no case for a time, scope or geographical area broader than that contemplated herein.

Section 3.10 Entire Agreement.

(a) This Agreement, together with the other Transaction Documents embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, commitments, arrangements, negotiations or understandings, whether oral or written, among the parties hereto and their respective Affiliates with respect thereto. There are no agreements, covenants or undertakings with respect to the subject matter of this Agreement other than those expressly set forth or referred to herein and no representations or warranties of any kind or nature whatsoever, express or implied, are made or shall be deemed to be made herein by the parties hereto, except those expressly made in this Agreement and the Transaction Documents.

(b) THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT NO REPRESENTATION, WARRANTY, PROMISE, INDUCEMENT, UNDERSTANDING, COVENANT OR AGREEMENT HAS BEEN MADE OR RELIED UPON BY ANY PARTY HERETO OTHER THAN THOSE EXPRESSLY SET FORTH IN THE TRANSACTION DOCUMENTS. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMER SET FORTH IN THE PRECEDING SENTENCE, (I) NEITHER SELLER NOR ANY OF ITS AFFILIATES HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES, IN ANY PRESENTATION OR WRITTEN INFORMATION RELATING TO THE BUSINESS OR THE ACQUIRED ASSET'S GIVEN OR TO BE GIVEN IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS, IN ANY FILING MADE OR TO BE MADE BY OR ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES WITH ANY GOVERNMENTAL AUTHORITY, AND NO STATEMENT MADE IN ANY SUCH PRESENTATION OR WRITTEN MATERIALS, MADE IN ANY SUCH FILING OR CONTAINED IN ANY SUCH OTHER INFORMATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE, AND (II) SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY.

Section 3.11 Expenses. Except as expressly set forth herein, each party hereto shall bear all fees and expenses incurred by such party in connection with, relating to or arising out of the execution, delivery and performance of this Agreement and the consummation of the contemplated transactions, including attorneys', accountants' and other professional fees and expenses.

Section 3.12 Injunctive Relief. Seller acknowledges that in the event of a breach by Seller or any of its Subsidiaries of the covenants contained in this Agreement, money damages could be an inadequate remedy. Accordingly, without prejudice to the rights of Buyer also to

seek such damages or other remedies available to it, Buyer may seek injunctive or other equitable relief in any proceeding that Buyer may bring to enforce the covenants contained in this Agreement, without the requirement of a bond or other security. No waiver of any breach of the covenants contained in this Agreement shall be implied from forbearance or failure of Buyer to take action in respect thereof.

[Signature Page Follows]

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

EPSILON US INC.

By: _____
Name:
Title:

**METCOM NETWORK SERVICES,
INC.**

By: _____
Name:
Title:

[SIGNATURE PAGE TO NONCOMPETITION AGREEMENT (SELLER)]

EXHIBIT G

Bid Procedures Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

METCOM NETWORK SERVICES, INC.,

Chapter 11
Case No. 16-11870 (MKV)

Debtor.

-----X

ORDER APPROVING (i) BIDDING, AUCTION AND OBJECTION PROCEDURES FOR SALE AND ASSUMPTION AND ASSIGNMENT OF ASSETS, LEASES AND AGREEMENTS, AND REJECTION OF AGREEMENTS, (ii) UP TO A \$150,000 EXPENSE REIMBURSEMENT TO EPSILON AS AN ADMINISTRATIVE EXPENSE IF ANY OTHER ENTITY MAKES HIGHER OR BETTER OFFER FOR ASSETS AND LEASES TO BE ASSUMED, (iii) SALE NOTICE, (iv) NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND CURE AMOUNTS, AND (v) FORM AND MANNER OF SERVICE OF NOTICES

Upon the motion dated January 6, 2017 (the "Motion")¹ of Metcom Network Services, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), which in part requested the Court's immediate entry of this Bidding Procedures Order (the "Order") (i) approving bidding, auction ("Auction"), and objection procedures for the Sale, Assumption and Assignment, and Rejection, (ii) approving up to a \$150,000 expense reimbursement ("Expense Reimbursement") to Epsilon U.S., Inc. ("Epsilon" or "Buyer") as an administrative expense in the Debtor's case, to be paid if any other entity makes a higher or better offer which is approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Assumed Agreements, (iii) approving a Sale Notice in the form annexed to the Motion at **Exhibit C** ("Sale Notice"), (iv) approving a Notice of the Debtor's Potential Assumption and Assignment of Certain Executory Contracts and Cure Amounts in the form annexed to the Motion at **Exhibit D** ("Cure Notice"), (v) establishing and approving the form and manner of service of the Sale Notice and Cure Notice; and this Court having considered the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Motion; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DETERMINED THAT:²

A. The Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested in the Motion are sections 105(a), 363, 365 and 1146 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006 and Local Rules 6004-1, 6006-1 and 9006-1(b).

B. The relief granted herein is in the best interests of the Debtor, its estate and other parties in interest.

D. The Debtor's proposed notices of (i) the Sale, (ii) the Assumption and Assignment of, and Cure Amounts (as defined in the Motion and below) for, the executory contracts and leases to be assumed and assigned (collectively, the "Assumed Agreements") to the Successful Bidder, (iii) the Rejection of Agreements, (iv) the APA, and (v) the Bidding Procedures, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of each.

F. The Bidding Procedures are fair, reasonable and appropriate, were negotiated in good faith by the Debtor and Epsilon and represent the best method for maximizing the value of the Debtor's estate in connection with the sale.

² The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

G. The Expense Reimbursement was negotiated by Epsilon and the Debtor in good faith and at arms' length and is (i) an actual and necessary cost and expense of preserving the Debtor's estate, within the meaning of 11 U.S.C. §§ 503(b), 507(a)(2) and 507(b); (ii) commensurate to the real and substantial benefit that Epsilon has conferred upon the Debtor's estate; (iii) reasonable and appropriate, in light of the size and nature of the proposed Sale Transaction and comparable transactions, the commitments that have been made and the efforts that Epsilon has and will continue to expend; (iv) necessary to induce Epsilon to continue to pursue the Sale and be bound by the APA; and (v) a necessary cost of the Sale and a sound and appropriate exercise of the Debtor's business judgment.

H. The procedures herein for the assumption and assignment of the Assumed Contracts and the establishment of cure amounts are reasonable and appropriate.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion for the issuance of this Bidding Procedures Order (the "Motion") is GRANTED, as set forth herein.
2. Any objections filed in response to the Motion and the relief granted herein, to the extent not resolved as set forth herein or at the hearing on the Motion scheduled in this Court's separate Order to Show Cause (the "Hearing"), are hereby overruled.
3. The bid of Epsilon as set forth in APA shall be considered a Qualifying Bid (as defined below).
4. Bidding Procedures. The following Bidding Procedures are hereby approved, and the Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures:
 - a. Any bidder(s) desiring to submit a bid(s) for the Acquired Assets shall deliver such bid(s) in the form of a signed letter bid ("Bid"), to (i) counsel to the Debtor, Ackerman Fox,

LLP, 90 Merrick Avenue, Suite 400, East Meadow, New York 11554, Attn: Neil Ackerman, Esq. and Kamini Fox, Esq. (nackerman@ackermanfox.com); and (ii) counsel to Epsilon, Andrew Gallo, Esq., Morgan, Lewis & Bockius, LLP, One Federal Street, Boston, MA 02110 (andrew.gallo@morganlewis.com) such that the Bid is actually received no later than 4:00 p.m. Eastern Time on January _____, 2017 (the "Bid Deadline").

b. Any Bid must be deemed "financially qualified" by the Debtor in its sole discretion in accordance with objective criteria set forth in this Bidding Procedures Order which, at a minimum, shall require any entity making a bid to evidence in writing that it has sufficient cash on hand or a binding financial commitment from an established financial institution to ensure such entity's ability to meet its commitments pursuant to its Bid(s) whether made prior to or at the Auction.

c. Any Bid(s) shall become irrevocable until the conclusion of the Auction, if any, except as set forth below, and shall only be considered a "Qualifying Bid" if the Bid is delivered by the Bid Deadline and meets **all** of the following requirements:

- i. The Bid must set forth the identity of the bidder (with name of contact person, address, phone number and email address), and if the entity making the bid is a business, the Bid must contain a description of the bidder(s)' business, and set forth the identity of the officer or authorized agent who will appear on behalf of such bidder at the Auction;
- ii. The Bid must include such prospective bidder(s)' bank statements, financial statements or other information and documents reasonably satisfactory to the Debtor (in the Debtor's sole, unfettered discretion) to evidence the bidder's ability to close on a sale transaction, through written evidence that the bidder has sufficient cash on hand or a binding financial commitment from an established financial institution to ensure such entity's ability to pay all sums due pursuant to its Bid(s) whether the Bid is made prior to or at the Auction;
- i. at a minimum, provides for aggregate consideration of at least \$50,000 over and above the Purchase Price (which expressly includes (A) the \$600,000.00 Cash Purchase Price, (B) all Cure Amounts required to be paid to the counterparties to Assumed Agreements, as identified on the Schedule of Assumed Agreements which is included in the Schedules annexed to the Debtor's Motion at **Exhibit G** (C) the amount necessary to resolve any secured claim asserted against the estate by NFS, Inc.; plus (D) \$150,000 to pay the Expense Reimbursement to Epsilon;
- iii. is not conditioned on the outcome of due diligence by the bidder(s) with respect to the Acquired Assets;

- iv. is not conditioned on the bidder(s)' ability to obtain financing;
- ii. The entity making the Competing Bid shall provide written evidence, satisfactory to the Court, the Debtor and the Debtor's counsel that there are no remaining corporate, partner, shareholder or regulatory approvals required of the entity making the Bid to consummate the transaction and the timing thereof.
- v. provides as good as or better terms, as determined by the Debtor in its sole discretion, as contained in all the APA, all Schedules and exhibits to the APA and the Motion;
- vi. is accompanied by a good faith deposit of \$175,000.00 in cash or certified or cashier's check payable to the Debtor, which deposit shall be subject to the jurisdiction of the Bankruptcy Court, shall be maintained by the Debtor's attorney in a segregated non-interest bearing account, and shall (A) be retained by the Debtor in the event the bidder submits the Successful Bid (as defined below), which is approved by the Bankruptcy Court, but fails to consummate the sale, or (B) be returned to such bidder in the event the Bid is not the Successful Bid or is not approved by the Bankruptcy Court;
- vii. is in the form of an executed asset purchase agreement in the same format as the APA which, subject only to acceptance by the Debtor and approval by the Bankruptcy Court, shall be binding on the bidder;
- viii. is accompanied by a redline showing any changes made to the APA by or in the Bid, except that in no event may any proposed changes make the Bid less favorable to the Debtor than the Bid set forth in the APA, and the Schedules and exhibits thereto.

d. If no Qualifying Bids (other than the bid of Epsilon as set forth in the APA) are received, the Debtor will request this Court at the Hearing to rule that Epsilon has made the highest and best bid for the Assets, Assumed Agreements ("Successful Bidder") and approve a sale to Epsilon pursuant to the APA. If a Qualifying Bid in addition to the bid by Epsilon is received, the Debtor shall hold an auction at this Court at the same date and time as the Hearing on the Debtor's Motion for approval of the Sale (the "Auction").

e. If the Auction is held, all bidders with Qualifying Bids shall appear at such Auction in person, or through a duly authorized representative. Only bidders who have submitted Qualifying Bids meeting the criteria above may participate in the Auction. Before the commencement of the Auction each bidder or its representative shall be required to provide the Debtor with proof satisfactory to the Debtor and the Debtors' counsel that such bidder or representative is legally empowered, by power of attorney or otherwise, and financially capable

to (A) bid on behalf of the prospective bidder(s), and (B) complete and sign, on behalf of the bidder(s), a binding and enforceable purchase and sale and assignment agreement to acquire the Acquired Assets, and to perform its obligations with respect thereto.

f. Epsilon (in its capacity as a Bidder) and each Qualified Bidder participating in the Auction must confirm that it (i) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (ii) has reviewed, understands and accepts the Bidding Procedures, (iii) is bound and intends to be bound by its asset purchase and (iv) has consented to the core jurisdiction of the Court.

g. The Auction shall be conducted by the Debtor and/or the Debtor's counsel, under the direction and supervision of the Court. Bidding will be conducted in minimum increments of \$50,000 ("Incremental Bid Amount"), *provided that* any incremental bids made by Epsilon shall be exempt from the Incremental Bid Amount requirement, so long as such incremental bid made by Epsilon is at least \$5,000.00 more than any other offers made by any other Qualified Bidders at the Auction. The value of the Expense Reimbursement shall be added to any bid by Epsilon for purposes of valuing any bid by Epsilon at the Auction.

h. The Auction shall continue until the Debtor selects the highest or otherwise best offer (the "Successful Bid" and, the Bidder submitting such Successful Bid, the "Successful Bidder"). In selecting the Successful Bid, the Debtor may consider, among other things: (i) the amount and nature of the consideration, (ii) the number, type and nature of any changes to the APA, (iii) the likelihood that the bidder will be available to satisfy any conditions to closing and the likely timing of any closing; (iv) the total consideration associated with the Bid; and (v) the net benefit to the estate of the transaction and stakeholders.

i. All bidders shall be deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to the Auction and the sale of the Acquired Assets.

j. Subject to Bankruptcy Court approval following the Auction, the entity that makes the Successful Bid shall purchase the Acquired Assets free and clear of all liens, claims, encumbrances and interests, pursuant to the Sale and Assumption/Assignment Order entered by this Court.

k. Upon the conclusion of the Auction and the selection of the Successful Bidder, the Debtor shall have the option of selecting one (1) Qualified Bid as the next highest or otherwise best Qualified Bid as back-up bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"). The Back-Up Bid shall remain open until the first business day following the closing of the Sale the Successful Bidder. The Debtor may designate the Back-Up Bidder to close the sale pursuant to its Back-Up Bid in the event the Successful Bidder fails to close, without further Court approval, and the Back-Up Bidder will be required to close the sale within two (2) days after such designation by the Debtor.

l. As soon as practicable after the closing of the Auction, the Debtor's Counsel will return the Qualifying Deposits to all other bidders, except for the Successful Bidder and the Back-up Bidder, whose deposits shall be held until the closing on the Sale.

m. The Successful Bidder must pay the balance of the Purchase Price for the Acquired Assets (the difference between the amount of the successful bid and the Qualifying Deposit) to the Debtor or its attorney, by bank check, or wire transfer, and all Cure Costs to counterparties to the Assumed Agreements that are being assumed, at the Closing (the "Closing").

n. Additional and/or modified terms and conditions may be imposed by the Debtor and announced at the Auction.

5. Sale Notice. The Sale Notice, substantially in the form attached hereto as Exhibit C to the Motion, is approved in all respects. The Sale Notice shall be served, no later than two (2) business days after entry of this Order (the "Mailing Date"), upon: (a) all entities known to have expressed an interest in a transaction with respect to the Acquired Assets; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Acquired Assets; (c) all federal, state and local taxing authorities which have a reasonably known interest in the relief requested by the Motion; (d) the New York Attorney General's office; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) the Office of the United States Trustee; (h) counterparties to Assumed Agreements; and (i) all persons or entities who filed a notice of appearance or a request for receipt of all notices in the Debtor's case, as of the date hereof.

6. On the Mailing Date or as soon thereafter as practicable, the Debtor (or its agents) shall serve by first-class mail, postage prepaid, the Sale Notice upon: (i) all known creditors of the Debtor, as reflected in the Debtor's schedules or amended schedules, or who filed a proof of claim in the Debtor's case as of the date of this Order; and (ii) all known equity security holders of the Debtor, as reflected in the Debtor's list of equity security holders which was filed with this Court.

7. Cure Notice. The proposed Notice of Potential Assumption and Assignment of Certain Executory Contracts and Cure Amounts (the "Cure Notice"), substantially in the form

attached to the Motion as Exhibit D, is approved in all respects. The Cure Notice shall be served, no later than the Mailing Date, upon: (i) the Office of the United States Trustee; (ii) all counterparties to Assumed Agreements.

- (a) Sale and Cure Objections. Any and all objections to the proposed Sale of Acquired Assets, and/or the Assumption and Assignment or Rejection of the Assumed Agreements to Epsilon under the APA, including (a) any objection to the Cure Amount listed on the Schedule of Assumed Agreements, and (b) objections concerning the assumption and assignment of Assumed Agreements based upon Epsilon's ability to provide Adequate Assurance (collectively, "Objections"), must be made in writing which identifies the objecting entity (with name, address, name of contact person, phone number and email address) and its connection with this case, must state with particularity the grounds for such objections or other statements of position, and must be (i) filed with the Clerk of this Court, with copies for chambers as required by this Court's chambers rules, by not later than 4:00 p.m. Eastern Time on a date which is not less than 2 business days prior to the Hearing scheduled by the Court in the Bidding Procedures Order (the "Objection Deadline"), with proof that the Objection has been served so as to be actually received by such Objection Deadline by: (a) counsel to the Debtor, Ackerman Fox, LLP, 90 Merrick Avenue, Suite 400, East Meadow, New York 11554, Attn: Neil Ackerman, Esq. and Kamini Fox, Esq. (nackerman@ackermanfox.com); and (b) counsel to Epsilon, Andrew Gallo, Esq., Morgan, Lewis & Bockius, LLP, One Federal Street, Boston, MA 02110 (andrew.gallo@morganlewis.com) (collectively, the "Notice Parties").

8. Failure to file **and** serve an Objection to the Sale, Assumption and Assignment, or Rejection, on or before the Objection Deadline shall be deemed to be consent for purposes of sections 363(f) and 365 of the Bankruptcy Code.

9. Any objection to a cure amount set forth on the Cure Notice must be made in writing which states with specificity what cure amount is required (with appropriate documentation in support thereof) and must be filed and served on the Notice Parties by the Objection Deadline.

10. If no objection to a proposed Cure Amount set forth in the Cure Notice is timely filed and served as set forth herein, then the Cure Amount set forth in the Cure Notice shall be

binding upon the non-Debtor party to the Assigned Lease and Agreement for all purposes, will constitute a final determination of the Cure Amount required to be paid by the Debtor or the prospective purchaser in connection with the assignment of any such Assigned Lease and Agreement to the Successful Bidder, and the non-Debtor party to the agreement shall be forever barred from asserting any other claims against the Debtor, Epsilon or the Successful Bidder (as appropriate), or the property of any of them, as to the Cure Amount.

11. If an objection is filed with respect to a proposed cure amount set forth in the Cure Notice, the dispute with respect to the cure amount may be resolved consensually, if possible, by the parties, or if the parties are unable to resolve their dispute, by this Court at the Hearing or another hearing to be scheduled by the Court.

12. If at any time after the entry of the Bidding Procedures Order, the Debtor identifies additional prepetition executory contracts and/or unexpired leases to be assumed and assigned as part of the Sale Transaction, the Debtor shall serve a supplemental Cure Notice in the same matter and on the same parties as the Cure Notice. A contract counterparty receiving any such supplemental Cure Notice shall have until the later of (a) the Objection Deadline, or (b) ten (10) days from service of the supplemental Cure Notice to file an objection to the assumption and assignment of its contract(s) and/or leases(s) in accordance with the procedures set forth herein.

13. To the extent that the Successful Bidder is not Epsilon, no later than twenty-four (24) hours after the close of the Auction, the Debtor shall serve adequate assurance information provided by the Successful Bidder on the non-Debtor parties to the Assigned Contracts or their counsel (if known) via electronic mail (for parties that have consented to service by electronic mail) or by email sent to their attorneys, and Non-Debtor parties to Assumed Agreements shall

have until 4:00 p.m. (Eastern Time) on the next day immediately following such date to file and serve (on the Debtor and the Debtor's counsel) objections based upon the ability of any Successful Bidder who is not Epsilon to provide adequate assurance of future performance.

14. The failure of any objecting person or entity to timely file its objection in accordance with the deadlines provided in this Order shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale of the Acquired Assets (including the transfer free and clear of all liens, claims, encumbrances and interests and the Assumption and Assignment of any executory contracts or leases contemplated by a Successful Bid).

15. Expense Reimbursement. The Expense Reimbursement is approved on the terms set forth in APA. Upon the consummation of a Sale Transaction to any person or entity other than Epsilon, the Debtor shall pay Epsilon in cash from the proceeds of such Sale Transaction the Expense Reimbursement of up to \$150,000. To the extent Epsilon becomes entitled to the Expense Reimbursement in accordance with the Bidding Procedures and this Order, Epsilon is hereby granted an allowed administrative claim in this Chapter 11 Case pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code in an amount equal to the Expense Reimbursement, which shall be deemed expunged if the Epsilon is the Successful Bidder. The Bidding Procedures and Expense Reimbursement are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtor's estate.

16. The Debtor is authorized to take all actions necessary and appropriate to implement and effectuate the relief granted pursuant to this Order in accordance with the Motion and to expend such sums of money and do other things as may be necessary and appropriate to comply with the requirements established by the Bidding Procedures and this Order.

17. The Debtor is authorized to conduct the Sale Transaction without the necessity of complying with any state or local bulk transfer laws or requirement.

18. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d) or other applicable law, this Order shall not be stayed after the entry hereof and shall be effective immediately upon signature hereof.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

SIGNED this ____ day of _____, 20__.

Hon. Mary Kay Vysocil
United States Bankruptcy Judge

EXHIBIT H

Sale Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Case No. 16-11870-MKV
Chapter 11

METCOM NETWORK SERVICES, INC.,

Debtor.

-----X

**ORDER PURSUANT TO SECTIONS
105(a), 363, 365 AND 1146 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 2002, 6004 AND 6006, AUTHORIZING
(I) THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES;
(II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS,
AND (III) REJECTION OF CERTAIN EXECUTORY CONTRACTS**

Upon the motion (the "Motion")¹ of Metcom Network Services, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor") for, among other things, entry of an order, pursuant to sections 105(a), 363(f), 365, and 1146 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 1001, 2002, 6004, 6006, and 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Bankruptcy Rules ("LBR") 6004-1, 6006-1, 9006-1, and 9077-1 (i) approving the sale of substantially all of the Debtor's assets (the "Acquired Assets")² free and clear of all liens, claims and encumbrances (other than with respect to Assumed Liabilities³) (the "Sale Transaction") to Epsilon (US) Inc., a Delaware corporation, or a Permitted Designee of Epsilon ("Epsilon" or "Purchaser"), or to the bidder making the highest and otherwise best bid (at the Auction, pursuant to an asset purchase agreement ("APA"), (ii) authorizing the assumption and assignment of certain unexpired leases and executory contracts listed in the Schedule of

¹ All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

² The Acquired Assets consist of substantially all of the Debtor's assets and shall have the meaning set forth in Section 2(a) of the APA (as defined below). Acquired Assets do not include the Excluded Assets as referenced in Section 2(b) of the APA.

³ As used herein, the term "Assumed Liabilities" shall have the meaning as defined in the APA.

Assumed Agreements which is included in the Schedules annexed to the Motion at **Exhibit G** (“Schedules”) (the “Assumed Agreements”), and (iii) approving the Debtor’s proposed rejection (“Rejection”) of one service order and one agreement specified and listed in the Schedule of Rejected Agreements which is included in the Schedules annexed to the Motion at **Exhibit G** in accordance with the APA (“Rejected Contracts”); and upon the Affidavit of Neil Ackerman duly sworn to on January 9, 2017 (the “Affidavit”) submitted with the Motion; and upon the **ORDER APPROVING (i) BIDDING, AUCTION AND OBJECTION PROCEDURES FOR SALE AND ASSUMPTION AND ASSIGNMENT OF ASSETS, LEASES AND AGREEMENTS, AND REJECTION OF AGREEMENTS, (ii) UP TO A \$150,000 EXPENSE REIMBURSEMENT TO EPSILON AS AN ADMINISTRATIVE EXPENSE IF ANY OTHER ENTITY MAKES HIGHER OR BETTER OFFER FOR ASSETS AND LEASES TO BE ASSUMED, (iii) SALE NOTICE, (iv) NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND CURE AMOUNTS, AND (v) FORM AND MANNER OF SERVICE OF NOTICES** (ECF Doc. No. ____; the “Bidding Procedures Order”) entered by this Court on January ____, 2017; and upon the Sale Notice and the Cure Notice which the Court authorized in the Bidding Procedures Order; and upon the affidavits of service which were filed with this Court by the Debtor’s counsel evidencing the due and timely service of the Sale Notice and the Cure Notice on the persons and entities required to be served, in the time and manner and set forth for such service, in the Bidding Procedures Order; and upon the this Court’s Order to Show Cause dated January ____, 2017, scheduling an expedited hearing on the Debtor’s Motion; and upon the affidavit of service which was filed with this Court by the Debtor’s counsel evidencing its service of the Order to Show Cause, the Motion and all exhibits to the Motion, Sale Notice and the Cure Notice

on the persons and entities required to be served, and in the time and manner set forth in the Order to Show Cause; and the Court having held a hearing on January __, 2017 (the “Sale Hearing”) to approve the Sale Transaction, the Assumption and Assignment of the Assumed Agreements and the Rejection of the Rejected Contracts; and the Court having reviewed and considered (a) the Motion, (b) the objections to the Motion, if any, and (c) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and upon the record of the Sale Hearing and the rest of the proceedings had in this Chapter 11 Case (as defined below); and after due deliberation thereon; and good cause appearing therefor; it is hereby

FOUND AND DETERMINED THAT:⁴

A. **Jurisdiction and Venue.** This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b) & (f), 365(a) & (b), and 1146 of the Bankruptcy Code, Bankruptcy Rules 1001, 2002, 6004, 6006, and 9006(c)(1), and LBR 6004-1, 6006-1, 9006-1, and 9077-1.

C. **Petition Date.** On June 28, 2016 (the “Petition Date”), the Debtor commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

D. **Entry of Bidding Procedures Order.** The Bidding Procedures Order (i) approved bidding, Auction, and objection procedures for the Sale, the Assumption and

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052 and 9014.

Assignment of the Assumed Agreements, and the Rejection of the Rejected Contracts, (ii) approved up to a \$150,000 expense reimbursement to Epsilon (“Expense Reimbursement”) as an administrative expense in the Debtor’s case, to be paid if any other entity made a higher or better offer which was approved by this Court for the Acquired Assets, and the Assumption and Assignment of the Leases and Agreements, (iii) approved the Sale Notice, (iv) approved the Cure Notice, and (v) established and approved the form and manner of service of the Sale Notice and Cure Notice. The Debtor’s counsel or the Debtor served these Notices as required.

E. **Compliance with Bidding Procedures Order.** As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtor has marketed the Acquired Assets and conducted the sale process in compliance with the Bidding Procedures Order, and the Auction was duly noticed and conducted in a non-collusive, fair and good faith manner. The Debtor and its professionals conducted the sale process in compliance with the Bidding Procedures Order, and have afforded potential purchasers a full and fair opportunity to make higher and better offers. The Purchaser acted in compliance with the terms of the Bidding Procedures. In accordance with the Bidding Procedures, the Debtor determined that the bid submitted by the Purchaser and memorialized by the Asset Purchase Agreement dated January █, 2017 between the Debtor and Purchaser (attached hereto as Exhibit 1, as may be amended, supplemented or restated, the “APA”) is the Successful Bid (as defined in the Bidding Procedures Order). The APA constitutes the highest and otherwise best offer for the Acquired Assets, and will provide a greater recovery for the Debtor’s estate than would be provided by any other available alternative. The Debtor’s determination that the APA constitutes the highest and

otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtor's business judgment.

F. **Notice.** As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) due, proper, timely, adequate and sufficient notice of the Motion, the APA, the Auction (including the Bid Deadline and all other requirements for the making of Qualified Bids), the Order to Show Cause, the Sale Notice, the Cure Notice, the proposed Sale (including the Objection Deadline with respect to the Sale), the date and time of the Sale Hearing, the Sale Transaction, the procedures for objecting to the Assumption and Assignment of the Assumed Agreements (including the Objection Deadline with respect to the proposed Assumption and Assignment, and any Cure Amount due to the counterparties to the he Assumed Contracts), and the Rejection of the Rejected Contracts, has been provided to the Office of the US Trustee, all known creditors and parties in interest herein, all counterparties to the Assumed Contracts or the Rejected Contracts, all persons or entities that filed a notice of appearance or a request for receipt of all notices in the Debtor's case, the Internal Revenue Service, the New York State Department of Taxation and Finance, the New York City Department of Finance, the Securities and Exchange Commission, and the Office of the Attorney General of the State of New York, in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007, and the applicable Local Rules and Orders of this Court, and fully in compliance with the Bidding Procedures Order; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale Transaction, the Assumption and Assignment of the Assumed Agreements or the Cure Amounts, or the Rejection of the Rejected Contracts, is or shall be required under any applicable law, rule, regulation or Order.

G. **Corporate Authority.** The Debtor (i) has full corporate power and authority to execute the APA and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtor; (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the APA; (iii) has taken all corporate action and formalities necessary to authorize and approve the APA and the consummation by the Debtor of the transactions contemplated thereby, including as required by its organizational documents; and (iv) no government, regulatory or other consents or approvals, other than those expressly provided for in the APA, are required for the Debtor to enter into the APA and consummate the Sale Transaction.

H. **Opportunity to Object.** A fair and reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein, has been given to all interested persons and entities, including but not limited to the following: (i) all counterparties to the Assumed Agreements or the Rejected Contracts; (ii) all known creditors, claimants, and interest holders of the Debtor; and (iii) all applicable federal, state and local taxing and regulatory authorities.

I. **Sale in Best Interest.** Consummation of the Sale of the Acquired Assets to the Purchaser at this time is in the best interests of the Debtor, its creditors, its estate and other parties in interest.

J. **Business Justification.** The Debtor has demonstrated that sound business reasons exist for the Sale Transaction. Entry into the APA, and the consummation of the transactions contemplated thereby, including the Sale Transaction, the Assumption and Assignment of the Assumed Agreements, and the Rejection of the Rejected Contracts, constitutes the Debtor's exercise of sound business judgment and such acts are in the best

interests of the Debtor, its estate, its creditors and all parties in interest. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the Sale Transaction. Such business reasons include, but are not limited to, the following: (i) the APA constitutes the highest and otherwise best offer for the Acquired Assets; (ii) the APA and the closing thereon will present the best opportunity to realize the value of the Acquired Assets on a going concern basis and avoid decline and devaluation of the Acquired Assets; and (iii) unless the Sale Transaction and all of the other transactions contemplated by the APA are concluded expeditiously, as provided for in the Motion and pursuant to the APA, recoveries to creditors may be jeopardized.

K. The Debtor and its professionals actively marketed the Acquired Assets to potential purchasers in accordance with the Bidding Procedures Order. The bidding and auction process set forth in the Bidding Procedures Order and the Bidding Procedures afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Acquired Assets. Based upon the record of this proceeding, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Acquired Assets.

L. No other person or entity or group of persons or entities has offered to purchase the Acquired Assets for an amount that would give equal or greater economic value to the Debtor than the value being provided by the Purchaser pursuant to the APA. Among other things, the Sale Transaction is the best alternative available to the Debtor to maximize the return to its creditors. The terms and conditions of the APA, including the consideration to be realized by the Debtor, are fair and reasonable. Approval of the Motion, the APA and the transactions contemplated thereby, including the Sale Transaction, the assumption and assignment of the

Assumed Agreements, and the Rejection of the Rejected Contracts, is in the best interests of the Debtor, its estate and creditors, and all other parties in interest.

M. **Arm's-Length Sale.** The APA was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith, and from arm's length bargaining positions. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the APA to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders.

N. **Good Faith Purchaser.** The Purchaser is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code and any other applicable or similar bankruptcy and non-bankruptcy law. Specifically: (i) the Purchaser recognized that the Debtor was free to deal with any other party interested in purchasing the Acquired Assets; (ii) the Purchaser complied in all respects with the provisions of the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bid procedures set forth in the Bidding Procedures Order; (iv) the negotiation and execution of the APA was at arm's-length and in good faith, and at all times each of the Purchaser and the Debtor was represented by competent counsel of its choosing; and (v) the Purchaser has not acted in a collusive manner with any person or entity. The Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the APA.

O. **Free and Clear.** The Debtor is the sole and lawful owner of the Acquired Assets and holds good title thereto. The Debtor may sell the Acquired Assets free and clear of all liens, obligations, Excluded Liabilities, claims (within the meaning of section 101(5) of the Bankruptcy

Code), cause of action, chose in action, charge, right of set off, recoupment, rebate, chargeback, credit or return, encumbrances and similar restrictions (other than Assumed Liabilities) (collectively, the "Encumbrances") because, with respect to each creditor asserting a lien, claim, encumbrance or interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object or withdrew objections to the Sale Transaction are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code; provided, that, any Encumbrances shall attach to the proceeds of the Sale Transaction in the same order of priority, with the same validity, force and effect that they had immediately prior to the Sale Transaction, subject to any rights, claims and defenses that the Debtor, the Debtor's estate or any trustee or other representative for the Debtor or the Debtor's estate, as applicable, may possess with respect thereto.

P. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated hereby, including the Sale Transaction and the Assumption and Assignment of the Assumed Agreements, (i) if the transfer of the Acquired Assets were not free and clear of all Encumbrances of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, or (ii) if the Purchaser would, or in the future could, be liable for any Encumbrances, including rights or claims based on any successor or transferee liability. The Purchaser will not consummate the transactions contemplated by the APA, including the Sale Transaction and the Assumption and Assignment of the Assumed Agreements pursuant to the terms of the APA and this Order, unless this Court expressly orders that none of the Purchaser, its affiliates, its present or contemplated members, or the Acquired Assets will

have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff or otherwise, directly or indirectly, any Encumbrances, including rights or claims based on any successor or transferee liability.

Q. Not transferring the Acquired Assets free and clear of all Encumbrances of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, would adversely impact the Debtor's efforts to maximize the value of its estate, and the transfer of the Acquired Assets other than pursuant to a transfer that is free and clear of all liens, claims, encumbrances and other interests of any kind or nature whatsoever would be of substantially less benefit to the Debtor's estate.

R. **Assumption and Assignment of Executory Contracts.** The (i) transfer of the Acquired Assets to the Purchaser and (ii) assignment to the Purchaser of the Assumed Agreements, will not subject the Purchaser to any liability whatsoever (other than Cure Costs that the Purchaser is obligated to pay under the terms of the APA) relating to the period prior to the Closing Date (as defined below) or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including any theory of equitable law, including any theory of antitrust, successor or transferee liability. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assumed Agreements to the Purchaser in connection with the consummation of the Sale Transaction, and the assumption and assignment of the Assumed Agreements is the best interests of the Debtor, its estate and its creditors. The Assumed Agreements being assigned to the Purchaser are an integral part of the Acquired Assets being purchased by the Purchaser and,

accordingly, such Assumption and Assignment of Assumed Agreements is reasonable, enhances the value of the Debtor's estate and does not constitute unfair discrimination.

S. **Cure/Adequate Assurance.** The Debtor and/or the Purchaser have (i) cured, or have provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Agreements, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Agreements within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The Purchaser has provided adequate assurance of future performance of and under the Assumed Agreements within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

T. **Prompt Consummation.** The sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtor and the Purchaser intend to close the Sale Transaction as soon as reasonably practicable. The Debtor has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the transaction contemplated by the APA. Accordingly, there is cause to authorize the Sale and the Assumptions and Assignments immediately following the entry of this Order, and to waive the 14-day stays after entry of the order otherwise applicable under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), with regard to the transactions contemplated by this Sale Order.

U. **No Fraudulent Transfer.** The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under any laws of the United States, any state, territory, possession or the District of Columbia. The Purchaser is not a

mere continuation, and is not holding itself out as a mere continuation, of the Debtor or its estate and there is no continuity between the Purchaser and the Debtor. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor.

V. The consideration provided by the Purchaser for the Acquired Assets pursuant to the APA (i) is fair and reasonable; (ii) is the highest and otherwise best offer for the Acquired Assets; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Conveyance Act, and all other such laws).

W. **No Successor Liability.** The transfer of the Acquired Assets to, and the assumption of the Assumed Liabilities (including any individual elements of the Sale Transaction) by, the Purchaser, except as otherwise expressly set forth in the APA, does not, and will not, subject the Purchaser to any liability whatsoever, with respect to the operation of the Debtor's business prior to the closing of the Sale Transaction or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including any laws affecting antitrust, successor, transferee or vicarious liability. Pursuant to the APA, the Purchaser is not purchasing all of the Debtor's assets, in that the Purchaser is not purchasing any of the Excluded Assets, or assuming the Excluded Liabilities, and the Purchaser is not holding itself out to the public as a continuation of the Debtor. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor and/or

the Debtor's estate. There is not substantial continuity between the Purchaser and the Debtor, and there is no continuity of enterprise between the Debtor and the Purchaser. The Purchaser is not a mere continuation of the Debtor or the Debtor's estate, and the Purchaser does not constitute a successor to the Debtor or the Debtor's estate.

X. **Legal, Valid Transfer.** The transfer of the Acquired Assets to the Purchaser will be a legal, valid and effective transfer of the Acquired Assets, and will vest the Purchaser with all right, title and interest of the Debtor to the Acquired Assets free and clear of all Encumbrances (other than with respect to Assumed Liabilities), as set forth in the APA. The Acquired Assets constitute property of the Debtor's estate and good title is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor is the sole and rightful owner of the Acquired Assets, and no other person has any ownership right, title or interests therein.

Y. **APA Terms Fair and Reasonable.** The terms of the APA and any related agreements, including any amendments, supplements and modifications thereto, are fair and reasonable in all respects.

Z. **Not a Sub Rosa Plan.** The Sale Transaction does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale Transaction neither impermissibly restructures the rights of the Debtor's creditors, nor impermissibly dictates a liquidating plan of reorganization for the Debtor.

AA. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

General Provisions

1. The Motion and the relief requested therein is **GRANTED** and **APPROVED** as set forth herein.

2. Objections that have not been withdrawn, waived or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

Approval of the Sale of the Acquired Assets

3. The APA, including any amendments, supplements and modifications thereto, and all of the terms and conditions therein, is hereby approved.

4. Pursuant to section 363(b) & (f) of the Bankruptcy Code, the sale of the Acquired Assets to the Purchaser free and clear of all Encumbrances (other than with respect to Assumed Liabilities), and the transactions contemplated by the APA are approved in all respects.

Sale and Transfer of Acquired Assets

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is hereby authorized and directed to sell the Acquired Assets to the Purchaser and consummate the Sale Transaction in accordance with, and subject to the terms and conditions of, the APA and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed in accordance with and subject to the terms and conditions of the APA, and the Debtor is further authorized and directed to execute and deliver, and is empowered to perform under, consummate and implement, the APA together with all additional agreements, instruments and documents that may be reasonably necessary or desirable to implement the APA, the form of which is hereby approved, and all related agreements, documents, exhibits and schedules, and to take all further actions as may be reasonably requested by the Purchaser for the purposes of assigning, transferring, granting, conveying and conferring

to the Purchaser or reducing to possession, the Acquired Assets, or as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the APA.

6. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, the Acquired Assets shall be transferred to the Purchaser upon consummation of the APA (the "Closing Date") free and clear of all Encumbrances of any kind or nature whatsoever (other than with respect to Assumed Liabilities), including all claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) and/or interests arising in any way in connection with any agreements, acts or failures to act, of the Debtor or any of the Debtor's predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising before or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under federal or state laws or doctrines of successor or transferee liability. Any Encumbrances not otherwise satisfied in full as the result of the consummation of the Sale shall attach to the proceeds of the Sale Transaction in the same order of priority, with the same validity, force and effect that they had immediately prior to the Sale Transaction, subject to any rights, claims and defenses that the Debtor, the Debtor's estate or any trustee or other representative for the Debtor or the Debtor's estate, as applicable, may possess with respect thereto.

7. To the greatest extent allowable under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are

deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date.

8. Following the Closing Date, the Debtor or the Purchaser is authorized and directed to execute and file a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances in the Acquired Assets of any kind or nature whatsoever. On the Closing Date, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Purchaser. On the Closing Date, this Order also shall be construed, and constitute for any and all purposes, a complete and general assignment of all right, title and interest of the Debtor and the bankruptcy estate to the Purchaser in the Assumed Agreements. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

9. All entities who are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date.

10. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtor to transfer the Acquired Assets to the Purchaser in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

11. Except as expressly permitted by the APA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding Encumbrances of any kind or nature whatsoever, including rights, interests or claims based on any successor or transferee liability, against or in the Debtor or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Acquired Assets or the operation of the Acquired Assets, or the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Assumed Agreements, are forever barred, estopped and permanently enjoined from asserting against the Purchaser, its respective successors and assigns, their respective property and the Acquired Assets, such persons' or entities' Encumbrances.

12. Following the Closing Date, no holder of an Encumbrance in the Debtor shall interfere with the Purchaser's title to or use and enjoyment of the Acquired Assets and the Assumed Agreements based on or related to such Encumbrance, or any actions that the Debtor may take in its Chapter 11 Case.

13. On the Closing Date of the Sale Transaction, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Encumbrances on the Acquired Assets, if any, as such Encumbrances may have been recorded or otherwise exist.

14. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Acquired Assets on account of the filing or pendency of the Chapter 11 Case

or the consummation of the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Assumed Agreements.

15. Subject to the terms and conditions of this Order, the transfer of the Acquired Assets to the Purchaser pursuant to the APA constitutes a legal, valid and effective transfer of the Acquired Assets, and shall vest the Purchaser with all right, title and interest of the Debtor in and to the Acquired Assets free and clear of all Encumbrances (other than with respect to Assumed Liabilities) of any kind or nature whatsoever.

No Successor Liability

16. The Purchaser is not a “successor” to the Debtor or its estate by reason of any theory of law or equity, and the Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of the Debtor and/or its estate, other than the Assumed Liabilities, with respect to the Acquired Assets or otherwise, including, but not limited to, under any bulk sales law, doctrine or theory of successor liability, or similar theory or basis of liability. Except to the extent the Purchaser assumes Assumed Liabilities and is ultimately permitted to assume the Assumed Agreements pursuant to the APA, neither the purchase of the Acquired Assets by the Purchaser nor the fact that the Purchaser is using any of the Acquired Assets previously used by the Debtor will cause the Purchaser to be deemed a successor in any respect to the Debtor’s business or incur any liability derived therefrom within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor (including any WARN Act), employment, environmental or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine.

17. The Purchaser has given substantial consideration under the APA, which consideration shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser and which shall be deemed to have been given in favor of the Purchaser by all holders of Encumbrances in or against the Debtor, or the Acquired Assets. Upon consummation of the Sale Transaction, the Purchaser shall not be deemed to (i) be the successor to the Debtor; (ii) have, *de facto* or otherwise, merged with or into the Debtor; or (iii) be a mere continuation, alter ego or substantial continuation of the Debtor.

18. Except to the extent specifically agreed by the Purchaser in the APA or this Order, the Purchaser shall not have any liability, responsibility or obligation for any Encumbrances of the Debtor or its estate, including any claims, liabilities or other obligations related to the Acquired Assets prior to Closing Date. Under no circumstances shall the Purchaser be deemed a successor of or to the Debtor for any Encumbrances against, in or to the Debtor or the Acquired Assets. For the purposes of this section of this Order, all references to the Purchaser shall include the Purchaser's affiliates, subsidiaries and shareholders.

Good Faith

19. The transactions contemplated by the APA are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein by this Order to consummate the Sale Transaction shall not affect the validity of the sale of the Acquired Assets to the Purchaser. The Purchaser is a purchaser in good faith of the Acquired Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

20. As a good faith purchaser of the Acquired Assets, the Purchaser has not entered into an agreement with any other potential bidders at the Auction, and has not colluded with any

of the other bidders, potential bidders or any other parties interested in the Acquired Assets, and, therefore, neither the Debtor nor any successor in interest to the Debtor's estate shall be entitled to bring an action against the Purchaser, and the Sale Transaction may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

Assumption and Assignment of Assumed Agreements

21. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale Transaction, the Debtor's assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the APA, of the Assumed Agreements is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

22. The Debtor is hereby authorized and directed in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective upon the Closing Date of the Sale Transaction, the Assumed Agreements free and clear of all Encumbrances of any kind or nature whatsoever and; (ii) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Purchaser.

23. The Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Agreements after such assignment to and assumption by the Purchaser, except as provided in the APA.

24. Any provision in any Assigned Contract that purports to declare a breach or default as a result of a change of control in respect of the Debtor is unenforceable and all Assumed Agreements shall remain in full force and effect. No sections or provisions of any Assumed Agreements that purport to (a) prohibit, restrict, or condition the Debtor's assignment of the Assigned Contract, including, without limitation, the conditioning of such assignment on the consent of the non-Debtor counterparty to such Assigned Contract, or terminate, recapture, impose any penalty, condition, renewal, or extension, or modify any term or condition upon the assignment of such Assumed Agreements; (b) authorize the dissolution of any partnership or determination, cancellation, or modification of any partnership interest or Assigned Contract based on the filing of a bankruptcy case, the financial condition of the Debtor, or similar circumstances; or (c) provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-Debtor counterparty to the Assumed Agreements upon the occurrence of the conditions set forth in subsections (a) and (b) above, shall have any force and effect with respect to the Sale Transaction and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code and, in each case, are void and of no force or effect.

25. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser of each Assigned Contract have been satisfied.

26. All defaults and all other obligations or liabilities under any Assigned Contract occurring, arising, or accruing prior to the date of the assignment or transfer to the Purchaser shall be deemed cured or satisfied upon payment of the proposed Cure Amount (if any), as set

forth in the Cure Notice, or any other cure amount reached by agreement after a Cure Objection, and, without limiting the foregoing, no effect shall be given to any default of the type set forth in section 365(b)(2) of the Bankruptcy Code, or the type of default concerning an unexpired lease of real property described in section 365(b)(1) of the Bankruptcy Code whether or not such Assigned Contract is an executory contract within the meaning of section 365 of the Bankruptcy Code. The Cure Amounts listed on the Cure Notice, or any other cure amounts reached by agreement or by Order of this Court after an Objection, reflect the sole amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under the Assumed Agreements, and no other amounts are or shall be due to the non-debtor parties in connection with the assumption by the Debtors and assignment to the Purchaser of the Assumed Agreements. To the extent a counterparty to an Assigned Contract failed to timely object to a Cure Amount (including any Cure Amount listed as zero), such Cure Amount shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid, shall completely revive any Assigned Contract to which it relates. To the extent the Cure Amount is listed as zero with respect to any Assigned Contract, the failure of the counterparty to the contract to timely object to the Assumption and Assignment of the Contract shall constitute consent to the Assumption and Assignment without the payment of any Cure Amount.

27. As of the Closing, with respect to the Purchaser or any of the Acquired Assets or any Assigned Contract with a Cure Amount listed as zero, and, upon payment of the Cure Amounts (if any) or such other amounts as the non-Debtor counterparties to such contracts shall have agreed to accept in lieu of such Cure Amounts, each non-Debtor counterparty to a Assigned

Contract shall be forever barred, estopped, and permanently enjoined from: (a) objecting to the Cure Amount or asserting any default, monetary or non-monetary, existing as of the Closing Date, (b) asserting any objection to the assumption and/or assignment of such non-Debtor counterparty's Assumed Agreements, whether or not such non-Debtor counterparty previously filed a proof of claim or files a proof of claim in the future, or (c) objecting that the Purchaser has not provided adequate assurance of future performance. Each non-Debtor counterparty to a Assigned Contract (and, with respect to Assumed Agreements with a Cure Amount greater than zero, provided that such Cure Amount is paid) shall be forever barred, estopped, and permanently enjoined from asserting any claim under any Assigned Contract on the basis of breaches or claims under the Assigned Contract existing, arising or accruing prior to or as of the Closing Date. Each non-Debtor counterparty to an Assigned Contract shall be forever barred, estopped, and permanently enjoined from asserting against the Debtor, the Purchaser or their respective property, any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising, or accruing prior to or as of the Closing Date or arising by reason of the closing of the Sale Transaction or the transfer of the Purchased Assets, including, without limitation, any breach related to or arising out of a change-in-control in such Assigned Contract, or any purported written or oral modification to the Assumed Agreements.

28. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtor's and the Purchaser's rights to enforce every term and condition of the Assumed Agreements.

29. All counterparties to an Assigned Contract shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the

Debtor or the Purchaser for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers of the Assumed Agreements in connection with the Sale. Nothing in this Order or any other document is or shall be deemed an admission by the Debtor that any contract, including any Assigned Contract, is an executory contract or unexpired lease or must be assumed and assigned pursuant to the APA in order to consummate the Sale Transaction.

Rejection of Rejected Contracts

30. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale Transaction, the Debtor's Rejection of the Rejected Contracts is hereby approved.

Additional Provisions

31. The consideration provided by the Purchaser for the Acquired Assets under the APA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

32. Each and every federal, state and local governmental agency, court or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. On the Closing Date, the Debtor and the Purchaser are authorized to take such actions as may be necessary to obtain a release of any and all Encumbrances in the Acquired Assets, if any, and to the extent contemplated hereby and by the APA. This Order shall be (i) effective as a determination that, on the Closing Date all Encumbrances of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; and (ii) binding upon

and shall govern the acts of all entities including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. The Purchaser and the Debtor shall take such further steps and execute such further documents, assignments, instruments and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph. All interests of record as of the date of this Order shall be forthwith deemed removed and stricken as against the Acquired Assets. All entities described in this paragraph are authorized and specifically directed to strike all such recorded liens, claims, rights, interests and encumbrances against the Acquired Assets from their records, official and otherwise.

33. If any person or entity that has filed statements or other documents or agreements evidencing claims, liens, encumbrances or interests in any of the Acquired Assets does not deliver to the Debtor or the Purchaser prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all interests that the person or entity has or may assert with respect to any of the Acquired Assets, the Debtor and/or the Purchaser are hereby authorized to execute and file such

statements, instruments, releases and other documents on behalf of such person or entity with respect to any of the Acquired Assets.

34. The Debtor will cooperate with the Purchaser and the Purchaser will cooperate with the Debtor, in each case to ensure that the transaction contemplated in the APA is consummated, and the Debtor will make such modifications or supplements to any bill of sale or other document executed in connection with the closing to facilitate such consummation as contemplated by the APA.

35. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Acquired Assets other than for the Assumed Liabilities. Without limiting the generality of the foregoing, and except as otherwise specifically provided in the APA, the Purchaser shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereinafter arising, whether fixed or contingent, with respect to the Debtor, the Acquired Assets or any obligations of the Debtor arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of or in connection with, or in any way relating to the operation of the business.

36. The terms and provisions of the APA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor and its affiliates, successors and assigns, its estate and its creditors, the Purchaser and its respective affiliates, successors and assigns and any affected third parties including, but not limited to, all persons asserting Encumbrances on the Acquired Assets to be sold to the Purchaser pursuant to the APA,

notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

37. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

38. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate. To the extent that any provision of the APA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

39. Nothing contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Case or any order of this Court confirming such plans or in any other order in the Chapter 11 Case, including any order entered after any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, shall alter, conflict with or derogate from, the provisions of the APA or the terms of this Order. The provisions of this Order and the APA and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtor, or which may be entered converting the Chapter 11 Case from chapter 11 to chapter 7 of the Bankruptcy Code, and the terms and provisions of the APA as well as the rights and interests granted pursuant to this Order and the APA shall continue in the Chapter 11 Case or any superseding case and shall be specifically performable and enforceable against and binding upon the Debtor, its estate and the Purchaser and their respective successors and permitted assigns, including any trustee,

responsible officer or other fiduciary hereafter appointed as a legal representative of the Debtor or its estate under chapter 7 or chapter 11 of the Bankruptcy Code.

40. The provisions of this Order are nonseverable and mutually dependent.

41. The Sale and Assumption and Assignment approved by this Order constitutes a transfer pursuant to Section 1146(a) of the Bankruptcy Code, and accordingly, the Sale and the making, recording or delivery of any instrument of transfer in connection with the Sale, and any transaction in connection with the Sale (or as otherwise necessary or appropriate to consummate the Sale, any Assignment) and any other documents relating to the Sale shall be exempt from any federal, state, local, municipal or other law imposing or claiming to impose any recording tax, transfer tax, or any other applicable stamp or similar tax.

42. Compliance with the legal requirements relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

43. The Debtor and each other person having duties or responsibilities under the APA or this Order, and their respective agents, representatives and attorneys, are authorized and empowered to carry out all of the provisions of the APA, to issue, execute, deliver, file and record, as appropriate, the APA, and any related agreements, and to take any action contemplated by the APA or this Order, and to issue, execute, deliver, file and record, as appropriate, such other contracts, instruments, releases, deeds, bills of sale, assignments or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the APA and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable business corporation, trust and other laws of applicable governmental units with

respect to the implementation and consummation of the APA and this Order and the transactions contemplated thereby and hereby.

44. [In the event the Successful Bidder/Purchaser is Epsilon, then the administrative claim granted to Epsilon for the Expense Reimbursement is hereby expunged in its entirety, and Epsilon shall not have any claim against the debtor or its Bankruptcy Estate related to the Expense Reimbursement, nor shall Epsilon be paid or due to be paid any portion of the Expense Reimbursement.]

45. [_____ is hereby designated as the Backup Bidder. In the event that the Purchaser fails to consummate the Sale Transaction, then the Backup Bidder will be deemed to have the new prevailing bid, and the Debtor will be authorized, without further order of this Court, to consummate the Sale Transaction with the Backup Bidder. In the event the Sale closes to the Backup Bidder, all references in this order to the Purchaser shall refer to the Backup Bidder.]

46. Except for the enumerated obligations of the Purchaser and any permitted assignee(s) under the APA, related agreements executed in connection with the APA and this Sale Order, effective as of the closing and funding of the transactions contemplated thereby, the Debtor and its affiliates, to the extent allowed under applicable law, are each hereby deemed to have irrevocably and unconditionally released, remised, and forever discharged the Purchaser and its affiliates, and their respective past, present and future shareholders, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives and advisors from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, liabilities, interest or causes of action whatsoever at law or in equity, known or unknown, which the Debtor and its affiliates might now or subsequently may have, based on, relating to or

arising out of the APA, the transactions contemplated thereby, the ownership, use or operation of the Acquired Assets or any properties of the Debtor or the condition, quality, status or nature of the Acquired Assets or any properties of the Debtor, including breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, common law rights of contribution and rights under insurance maintained by the Debtor or its affiliates.

47. This Court shall retain exclusive jurisdiction to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Acquired Assets to the Purchaser free and clear of Encumbrances (other than with respect to Assumed Liabilities), or compel the performance of other obligations owed by the Debtor; (ii) compel delivery of the purchase price or performance of other obligations owed to the Debtor; (iii) resolve any disputes arising under or related to the APA, except as otherwise provided therein; (iv) interpret, implement, and enforce the provisions of this Order; and (v) protect the Purchaser against (a) claims made related to any of the Excluded Liabilities; (b) any claims of successor or vicarious liability related to the Acquired Assets or Assumed Agreements; or (c) any claims or Encumbrances asserted on or in the Debtor or the Acquired Assets, of any kind or nature whatsoever.

48. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply. Any party objecting to this Sale Order must exercise due diligence in filing an appeal

and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal will be foreclosed as moot.

SIGNED this ____ day of January, 2017

Mary Kay Vysocil
United States Bankruptcy Judge

EXHIBIT I

Employment Agreements

EXECUTION VERSION

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Mark DuMoulin, Sr., an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee, and Employee hereby accepts such employment, as the VP US Operations for the Company, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships; however, such modifications shall not affect or undermine Employee's ability to meet and/or fulfill the Performance Goals defined in **Section 1(b)** below. Employee shall devote all of his business time, attention, and efforts to the performance of Employee's duties hereunder.¹ Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$203,700 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. ("APA"). In addition to his Base Salary and Benefits, upon the one-year anniversary of the Effective Date, and contingent upon the Company's attainment of the performance goals set forth on Exhibit A hereto (the "Performance Goals"), as determined by the Board, and provided that there has been no breach of any of the representations or warranties in clause 5 of the APA which results in or causes a loss, damage, cost, expense or exposure of \$25,000 or more to the Company, Employee shall be eligible to receive a single lump-sum performance bonus of \$250,000 (the "Performance Bonus"), or, in the discretion of the Board, the percentage of such Performance Bonus, if some but not all of the Performance Goals have been reached, set forth in the Weightage Column in Exhibit A hereto in respect of the Performance Goals reached and fulfilled. For the avoidance of doubt, no Performance Bonus will be paid unless Employee is employed by the Company on the one-year anniversary of the Effective Date, except as otherwise set forth in **Section 2(b)**. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company.

¹ It is understood and agreed that Employee operates another business, RFPOP, LLC, which performs engineering services for radio-based customers, and that so long as Employee performs his regular services for Company, he may perform services for this other business on nights after he completes work for Company during the workweek, on weekends, or on legal holidays. In all events, Employee's work for Epsilon shall take precedence and be given priority.

The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of his employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Salary Portion (as defined below) of the Severance Payment will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Salary Portion of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means (i) the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date (the "Salary Portion") and, (ii) to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, the Performance Bonus, on such one-year anniversary.

(c) "Cause" shall mean (i) Employee's failure to perform his duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by

the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement (including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)** and, to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, payment of the Performance Bonus to the Employee's estate, on such one-year anniversary.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue,

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a "separation from service" under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee's last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the "Excess Amount." If at the time of Employee's separation from service, the Company's (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise

and Employee is a "specified employee" (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company's (or any successor thereto) "specified employee" determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee's last day of employment with the Company (or any successor thereto) for six (6) months following Employee's last day of employment with the Company (or any successor thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee's last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee's estate within sixty (60) days after Employee's death.

(c) Reimbursements. All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another, subject to footnote 1.

6. Restrictive Covenants.

(a) Employee acknowledges that during his employment with the Company, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing his duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all

appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during his employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of his affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. "Restricted Business" means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee's termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service, and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during his employment and for a period of one (1) year following such termination (the "Solicitation Restricted Period"), he shall not, and shall not permit any of his affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, he shall not, and shall not permit any of his affiliates to, directly or indirectly, solicit or entice, or attempt to

solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made

for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Mark DuMoulin, Sr.
143 Sportsmen Drive
Central Islip, NY 11722
or at the last known address of Employee contained in the personnel records of the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee's termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. **Successors; Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. **No Third Party Beneficiaries.** Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, premise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

EMPLOYEE

Mark DuMoulin, Sr.

EPSILON US INC.

By: _____
Name:
Title:

[Signature Page to Employment Agreement]

EXHIBIT A

Performance Goals

(to be measured as of the one-year anniversary of the Effective Date)

	Key Performance Indicators	Weightage	Payout %
I	Successful absorption of the technical operation of the Debtor into Buyer including integration of the full list of circuits, x connects and billable customer inventory into Buyer's operational systems	40%	
1	Complete documentation of technical operation and inventory list;		20%
2	Assist with and ensure complete transfer of technical operation into Buyer's operational system; access rights to all systems and peripheral systems		20%
II	Successful acquisition of the customer billing as shared in files "Sales summary items" including the successful migration of all customer contracts, sales order forms and agreements into Buyer's finance systems	40%	
1	Provide complete listing of customer contracts, sales order forms		10%
2	Assist Buyer with queries on customer (customer which exist preceding Buyer's acquisition) issues due to background history		10%
3	Render support to ensure smooth transition to buyer order system		20%
III	Successful migration of network equipment, routers, switches and transport equipment over into Buyer's operations environment	10%	
1	Documentation of transfer of business processes and procedures		10%
IV	Successful integration and introduction of Buyer's users on the Debtor's operations/ordering system	10%	
1	Assist buyer and provide knowledge transfer of current ADM/ancillary order system and Quickbooks and peripheral accounting and support system including documentation		10%

Notes:

Payout for each milestone is subject to assessment and to be signed off between Employee and the Company.

The payout will be made on the one-year anniversary, subject to completion and achievement of all KPIs listed.

EXECUTION VERSION

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Mark DuMoulin II, an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee in a position which is substantially similar to Employee's prior position with Metcom Network Services, Inc., and Employee hereby accepts such employment, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships. Employee shall devote all of his business time, attention, and efforts to the performance of Employee's duties hereunder. Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$188,517.68 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company. The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of his employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Severance Payment (as defined below) will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date.

(c) "Cause" shall mean (i) Employee's failure to perform his duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement (including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)**.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue.

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the

appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a "separation from service" under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee's last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the "Excess Amount." If at the time of Employee's separation from service, the Company's (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise and Employee is a "specified employee" (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company's (or any successor thereto) "specified employee" determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee's last day of employment with the Company (or any successor thereto) for six (6) months following Employee's last day of employment with the Company (or any successor thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee's last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee's estate within sixty (60) days after Employee's death.

(c) Reimbursements. All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another.

6. Restrictive Covenants.

(a) Employee acknowledges that during his employment with the Company, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing his duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during his employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of his affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, principal, agent, trustee

or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. "Restricted Business" means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee's termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service, and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during his employment and for a period of one (1) year following such termination (the "Solicitation Restricted Period"), he shall not, and shall not permit any of his affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, he shall not, and shall not permit any of his affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; *provided*, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Mark DuMoulin II
310 East 23rd Street, Apt. 9A
New York, NY 10010

or at the last known address of Employee contained in the personnel records of the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee's termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. No Third Party Beneficiaries. Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, premise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

EMPLOYEE

Mark DuMoulin II

EPSILON US INC.

By: _____
Name:
Title:

EXECUTION VERSION

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Susan B. DuMoulin, an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee, and Employee hereby accepts such employment, as the VP Office Manager for the Company, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships; however, such modifications shall not affect or undermine Employee's ability to meet and/or fulfill the Performance Goals defined in **Section 1(b)** below. Employee shall devote all of her business time, attention, and efforts to the performance of Employee's duties hereunder. Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$124,754.05 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. ("APA"). In addition to her Base Salary and Benefits, upon the one-year anniversary of the Effective Date, and contingent upon the Company's attainment of the performance goals set forth on Exhibit A hereto (the "Performance Goals"), as determined by the Board, and provided that there has been no breach of any of the representations or warranties in clause 5 of the APA which results in or causes a loss, damage, cost, expense or exposure of \$25,000 or more to the Company, Employee shall be eligible to receive a single lump-sum performance bonus of \$250,000 (the "Performance Bonus"), or, in the discretion of the Board, the percentage of such Performance Bonus, if some but not all of the Performance Goals have been reached, set forth in the Weightage Column in Exhibit A hereto in respect of the Performance Goals reached and fulfilled. For the avoidance of doubt, no Performance Bonus will be paid unless Employee is employed by the Company on the one-year anniversary of the Effective Date, except as otherwise set forth in **Section 2(b)**. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company. The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be

appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of her employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Salary Portion (as defined below) of the Severance Payment will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Salary Portion of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means (i) the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date (the "Salary Portion") and, (ii) to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, the Performance Bonus, on such one-year anniversary.

(c) "Cause" shall mean (i) Employee's failure to perform her duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement

(including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)** and, to the extent not already paid, and contingent upon the Company's attainment of the Performance Goals as of the one-year anniversary of the Effective Date as set forth in **Section 1(b)**, payment of the Performance Bonus to the Employee's estate, on such one-year anniversary.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue.

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a "separation from service" under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee's last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the "Excess Amount." If at the time of Employee's separation from service, the Company's (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise and Employee is a "specified employee" (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company's (or any successor thereto) "specified employee" determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee's last day of employment with the Company (or any successor thereto) for six (6) months following Employee's last day of employment with the Company (or any successor

thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee's last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee's estate within sixty (60) days after Employee's death.

(c) **Reimbursements.** All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. Certain Representations and Warranties of Employee. Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another.

6. Restrictive Covenants.

(a) Employee acknowledges that during her employment with the Company, she will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing her duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during her association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by

legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during her employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of her affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. "Restricted Business" means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee's termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service, and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during her employment and for a period of one (1) year following such termination (the "Solicitation Restricted Period"), she shall not, and shall not permit any of her affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, she shall not, and shall not permit any of her affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending

provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Susan B. DuMoulin
143 Sportsmen Drive

Central Islip, NY 11722

or at the last known address of Employee contained in the personnel records of
the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or
Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in
the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent
jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the
remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent
of the Company except pursuant to the laws of descent and distribution and then only for purposes of
enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only
with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed;
provided, however, that the Company may assign its rights and obligations under this Agreement without
consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge
with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any
other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section
7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and
thereafter (including following Employee's termination of employment for any reason) by making
himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action,
suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or
any of its affiliates in any such action, suit, or proceeding by providing information and meeting and
consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket
expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to
a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this
Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation,
administration, performance or enforcement of this Agreement.

11. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. **Successors; Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. **No Third Party Beneficiaries.** Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, premise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

EMPLOYEE

Susan B. DuMoulin

EPSILON US INC.

By: _____
Name:
Title:

EXHIBIT A

Performance Goals

(to be measured as of the one-year anniversary of the Effective Date)

	Key Performance Indicators	Weightage	Payout %
I	Successful absorption of the technical operation of the Debtor into Buyer including integration of the full list of circuits, x connects and billable customer inventory into Buyer's operational systems	40%	
1	Complete documentation of technical operation and inventory list;		20%
2	Assist with and ensure complete transfer of technical operation into Buyer's operational system; access rights to all systems and peripheral systems		20%
II	Successful acquisition of the customer billing as shared in files "Sales summary items" including the successful migration of all customer contracts, sales order forms and agreements into Buyer's finance systems	40%	
1	Provide complete listing of customer contracts, sales order forms		10%
2	Assist Buyer with queries on customer (customer which exist preceding Buyer's acquisition) issues due to background history		10%
3	Render support to ensure smooth transition to buyer order system		20%
III	Successful migration of network equipment, routers, switches and transport equipment over into Buyer's operations environment	10%	
1	Documentation of transfer of business processes and procedures		10%
IV	Successful integration and introduction of Buyer's users on the Debtor's operations/ordering system	10%	
1	Assist buyer and provide knowledge transfer of current ADM/ancillary order system and Quickbooks and peripheral accounting and support system including documentation		10%

Notes:

Payout for each milestone is subject to assessment and to be signed off between Employee and the Company.

The payout will be made on the one-year anniversary, subject to completion and achievement of all KPIs listed.

EXECUTION VERSION

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is entered into as of January __, 2017 (the "Effective Date") by and between Epsilon US Inc. (the "Company"), and Michael DuMoulin, an individual ("Employee").

WHEREAS, Employee and the Company desire to enter into this Agreement effective as of the date hereof, to set forth the terms and conditions of Employee's employment with the Company.

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Commencing as of the Effective Date and continuing until the second anniversary of the Effective Date (the "Term"), the Company hereby agrees to employ Employee in a position which is substantially similar to Employee's prior position with Metcom Network Services, Inc., and Employee hereby accepts such employment, with such duties and responsibilities as shall be set forth by the Board of Directors of the Company, or any designee(s) thereof (collectively, the "Board"). To the extent necessary to meet the Company's business goals, the Board may modify Employee's duties or assign new duties to Employee or modify Employee's reporting relationships. Employee shall devote all of his business time, attention, and efforts to the performance of Employee's duties hereunder. Employee shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company.

(b) As consideration for the services performed by Employee, the Company shall pay Employee a base salary, which may be subject to annual adjustment (but if there is a reduction, in no event shall any reduction be greater than the US consumer price index), at the annual rate of \$173,087.20 ("Base Salary"), payable in installments at such times as the Company customarily pays its other executives (but in any event no less often than bi-weekly), plus benefits ("Benefits") which are substantially similar to those benefits set forth on Schedule A to the Asset Purchase Agreement entered into between the Company and Metcom Network Services, Inc. So long as Employee remains employed by the Company, the Company will provide benefits to Employee no less favorable than those benefits made available generally to similarly situated employees of the Company. The Company may withhold from any amounts payable under this Agreement such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(c) The Company agrees to reimburse Employee for all reasonable business travel and other out-of-pocket expenses incurred by Employee in the discharge of Employee's duties hereunder, subject to the Company's reimbursement policies in effect from time to time. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Company's expense reporting policy, as may be in effect from time to time, as well as applicable federal and state record keeping requirements.

2. Termination.

(a) Employee's employment with the Company is at-will, and Employee's employment with the Company can be terminated by the Company or Employee for any reason, with or without Cause, and without prior notice provided that Employee shall provide the Company with two weeks' notice of any termination.

(b) In the event that the Company terminates Employee's employment without Cause (as defined below), Employee shall be entitled to receive the Severance Payment (as defined below); provided, however, that Employee's receipt of the Severance Payment is expressly conditioned on Employee's execution and non-revocation of a general release and waiver of any and all claims against the Company arising out of his employment or termination thereof in form and substance specified by and acceptable to the Company (the "Separation Release"). The Separation Release will provide that Employee agrees to waive and release any claims arising from Employee's employment relationship with the Company that may, by law, be waived and released, including without limitation, claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), similar state and local laws, and other causes of action arising from situations, circumstances, events or occurrences relating to the employment relationship. The Severance Payment (as defined below) will be paid to Employee as follows: a first payment, which will cover the first two months of Employee's severance, will be paid to Employee in a lump sum cash payment on the sixtieth (60th) day following Employee's separation date, provided that Employee has executed, submitted to the Company, and not revoked the Separation Release and the revocation period for the Separation Release has expired, and the remaining amount of the Severance Payment will be paid to Employee in accordance with the Company's normal payroll practices in effect at the time of termination following such sixtieth (60th) day for the remainder of the period in which the Severance Payment is payable (the "Severance Period"). "Severance Payment" means the Employee's Base Salary for the remainder of the Term at the rate in effect as of Employee's separation date.

(c) "Cause" shall mean (i) Employee's failure to perform his duties as an employee or other associate of the Company or any of the Company subsidiaries, such failure to be determined by the Board, which failure has continued unremedied for more than thirty (30) days after the Company has provided written notice thereof; (ii) Employee's fraud, embezzlement or other material dishonesty or breach of fiduciary duty against the Company or any of the Company subsidiaries as determined by the Board; (iii) any conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony (or any state-law equivalent) or that involves moral turpitude, or any willful or material violation by Employee of any federal, state or foreign securities laws; (iv) any conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct by Employee as determined by the Board; (v) the use (including being under the influence) or possession of illegal drugs by Employee on the premises of the Company or any of the Company subsidiaries or while performing any duties or responsibilities with the Company or any of the Company subsidiaries; (vi) the material violation by Employee of any rule or policy of the Company or any of the Company subsidiaries or the commission of any act that involves moral turpitude, in each case as determined by the Board; or (vii) the breach by Employee of any covenant undertaken in any effective award agreement, employment agreement (including this Agreement) or any written non-disclosure, non-competition, or non-solicitation covenant or agreement with the Company or any of the Company subsidiaries.

(d) In the event of the death of Employee during the term of Employee's employment with the Company, this Agreement shall automatically terminate, and the Company shall have no further obligations hereunder except as provided in **Section 2(e)**.

(e) Upon termination of this Agreement for any reason, Employee (or Employee's estate or personal representative, as applicable) shall be entitled to receive (i) all of Employee's accrued but unpaid Base Salary through the effective date of termination, whereafter no further Base Salary shall accrue.

3. Withholding Taxes. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation, and Company shall be responsible to pay such withheld amounts over to the

appropriate taxing authority as required by applicable laws, rules and regulations. Employee shall bear all expense of, and shall be solely responsible for, any and all taxes associated with the compensation and benefits provided under this Agreement.

4. Section 409A of the Code.

(a) General. Notwithstanding the other provisions hereof, this Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), to the extent applicable, and shall be interpreted to avoid any penalty sanctions under Section 409A. Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and, if necessary, any such provision shall be deemed amended to comply with Section 409A and regulations thereunder. If any payment or benefit cannot be provided or made at the time specified herein without incurring sanctions under Section 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such sanctions will not be imposed. All payments to be made upon a termination of employment under this Agreement that are deferred compensation may only be made upon a "separation from service" under Section 409A. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may Employee, directly or indirectly, designate the calendar year of payment.

(b) Payment Delay. To the maximum extent permitted under Section 409A, the Severance Payment payable under this Agreement is intended to comply with the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and any remaining amount is intended to comply with the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii); provided, however, any amount payable to Employee during the six (6) month period following Employee's last day of employment with the Company that does not qualify within this exception and constitutes deferred compensation subject to the requirements of Section 409A shall hereinafter be referred to as the "Excess Amount." If at the time of Employee's separation from service, the Company's (or any entity required to be aggregated with the Company under Section 409A) stock is publicly-traded on an established securities market or otherwise and Employee is a "specified employee" (as defined in Section 409A and determined in the sole discretion of the Company (or any successor thereto) in accordance with the Company's (or any successor thereto) "specified employee" determination policy), then the Company shall postpone the commencement of the payment of the portion of the Excess Amount that is payable within the six (6) month period following Employee's last day of employment with the Company (or any successor thereto) for six (6) months following Employee's last day of employment with the Company (or any successor thereto). The delayed Excess Amount shall be paid in a lump sum to Employee within thirty (30) days following the date that is six (6) months following Employee's last day of employment with the Company (or any successor thereto) and any amounts payable after such six (6) month period shall be paid in accordance with its original schedule. If Employee dies during such six (6) month period and prior to the payment of the portion of the Excess Amount that is required to be delayed on account of Section 409A, such Excess Amount shall be paid to the personal representative of Employee's estate within sixty (60) days after Employee's death.

(c) Reimbursements. All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Employee's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the taxable year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

5. **Certain Representations and Warranties of Employee.** Employee represents and warrants that Employee is entering into this Agreement voluntarily and that Employee's employment hereunder and compliance with the terms and conditions of this Agreement will not conflict with, or result in a breach of, any agreement to which Employee is a party or by which Employee may be bound, or any legal duty that Employee owes or may owe to another.

6. **Restrictive Covenants.**

(a) Employee acknowledges that during his employment with the Company, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company's subsidiaries and their affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, Employee acknowledges that: (i) the Company, the Company's subsidiaries and/or their affiliates have invested, and continue to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company, the Company's subsidiaries and their affiliates with a competitive advantage over others in the marketplace; and (iii) the Company, the Company's subsidiaries and their affiliates would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which Employee is subject, Employee shall not, directly or indirectly, disclose or use (other than solely for the purposes of Employee performing his duties as a manager, officer, employee, consultant or other service provider of the Company) at any time, including, without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company, the Company's subsidiaries and their affiliates or thereafter, any Confidential Information of which Employee is or becomes aware. Employee in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in this **Section 6** shall prevent Employee from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over Employee; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other employees; or (vi) to such Employee's representatives who, in the reasonable judgment of such Employee, need to know such Confidential Information and agree to be bound by the provisions of this Section 6 as if an Employee; *provided*, that in the case of clause (i), (ii) or (iii), Employee shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee hereby agrees that, during his employment and for a period of one (1) year following such termination (the "Restricted Period"), Employee shall not, and shall not permit any of his affiliates to, directly or indirectly, (x) engage in or assist others in engaging in the business of any Restricted Business (defined below) or any division or business segment of any Restricted Business, (y) have an interest in any Restricted Business or any division or business segment of any Restricted Business in any capacity, including as a partner, shareholder, member, principal, agent, trustee

or consultant, or (z) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any Company subsidiary and customers or suppliers of the Company or any Company subsidiary or cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Company or any Company subsidiary (including any existing or former client or customer of the Company or any Company subsidiary and any person that becomes a client or customer of the Company or any Company subsidiary during the Restricted Period), or any other person who has a material business relationship with the Company or any Company subsidiary, to terminate or modify any such actual or prospective relationship. "Restricted Business" means the business of providing internet access, interconnection, cross-connects, colocation, web hosting and communications services, including, without limitation, the fiber optic telecommunications business; *provided, however*, that during the one year period following Employee's termination, the Restricted Business as to all of these except for web hosting shall be limited to such business within the State of New York and any other geographic area wherein the Company provides or plans to provide service and that the Restricted Business as to web hosting during such one year period shall be limited to the New York Metropolitan area.

(d) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during his employment and for a period of one (1) year following such termination (the "Solicitation Restricted Period"), he shall not, and shall not permit any of his affiliates to, directly or indirectly, hire or solicit any employee of the Company or any Company subsidiary, or person who was employed by the Company or any Company subsidiary during the Solicitation Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment.

(e) In light of Employee's access to Confidential Information and position of trust and confidence with the Company, Employee further agrees that, during the Solicitation Restricted Period, he shall not, and shall not permit any of his affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any Company subsidiary or potential clients or customers of the Company or any Company Subsidiary.

(f) If any court of competent jurisdiction determines that any of the covenants set forth in this **Section 6**, or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this **Section 6** or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

(g) The restrictions of **Section 6(a)** shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement; (ii) is or becomes available to Employee or any of its representatives on a non-confidential basis prior to its disclosure to Employee and any of its representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Employee without use of Confidential Information; or (iv) becomes available to Employee or any of its representatives on a non-confidential basis from a source other than the Company, any other Employee or any of their respective representatives; provided, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Employee or any of its representatives.

7. Invention Assignment.

(a) Employee agrees to promptly and fully disclose to the Company any and all inventions, original works of authorship, findings, conclusions, data, discoveries, developments, concepts, improvements, trade secrets, patent, copyright or similar laws (collectively, "Inventions").

(b) Employee hereby assigns, transfers and conveys to the Company all of Employee's right, title and interest in and to any and all Inventions that Employee may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, in the performance of the services under this Agreement or that result, to any extent, from the use of the Company's premises or property, including but not limited to all patent rights, copyrights, trademarks, know-how and trade secrets and rights to apply for the same. Upon request and at the expense of the Company, Employee shall execute and deliver any and all instruments and documents and take such other acts as may be necessary or desirable to document the assignment and transfer described in this **Section 7** or to enable the Company to secure the rights relating thereto.

(c) Employee shall have no obligation to assign to the Company any Invention for which no equipment, supplies, facilities or Confidential Information was used and which was developed entirely on Employee's own time, unless (i) the Invention relates to the business of any of the Company, the Company's subsidiaries and/or their affiliates, (ii) the Invention relates to actual or demonstrably anticipated research or development work of any of the Company, the Company's subsidiaries and/or their affiliates, or (iii) the Invention results from any work performed by Employee for the Company.

(d) Employee hereby represents and warrants that as of the date of the execution of this Agreement, Employee does not have any rights in any Invention.

8. Notices. For the purposes of this Agreement, any notice or demand hereunder to or upon any party hereto required or permitted to be given or made shall be deemed to have been duly given or made for all purposes if (a) in writing and sent by (i) messenger or an overnight courier service, or (ii) certified or registered mail, postage paid, return receipt requested, or (b) sent by telefax, telex, an attachment to an electronic mail message in "pdf" or similar format, or similar electronic means, read receipt required, to such party at the following address:

In the case of Employee, to Employee at:

Michael DuMoulin
285 Southlawn Avenue
Central Islip, NY 11722
or at the last known address of Employee contained in the personnel records of
the Company.

In the case of the Company, to it at:

Epsilon US Inc.
New Tech Park #06-01A, Lobby A
151 Lorong Chuan
Singapore 556741
Attention: Jerzy Szlosarek

or, in the case of either party, as applicable, to such other names or addresses as the Company or Employee, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section.

9. Severability; Assignment.

(a) If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such portion shall be deemed deleted as though it had never been included herein, but the remainder of this Agreement shall remain in full force and effect.

(b) This Agreement (i) shall not be assignable by Employee without the prior written consent of the Company except pursuant to the laws of descent and distribution and then only for purposes of enforcing Employee's rights under **Sections 2(e) and 4** and (ii) shall be assignable by the Company only with the consent of Employee, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may assign its rights and obligations under this Agreement without consent of Employee in the event that the Company shall effect a reorganization or consolidate or merge with, sell all or substantially all of its equity or assets to, or enter into any other transaction with, any other entity, including, without limitation, its rights under **Section 6** (Restrictive Covenants) and **Section 7** (Invention Assignment).

10. Cooperation With Regard to Litigation; Waiver of Trial By Jury.

(a) Employee agrees to cooperate with the Company during the term of this Agreement and thereafter (including following Employee's termination of employment for any reason) by making himself or herself reasonably available to testify on behalf of the Company or its affiliates, in any action, suit or proceeding, whether civil, criminal, administrative, or investigative, and to assist the Company or any of its affiliates in any such action, suit, or proceeding by providing information and meeting and consulting with its counsel and representatives. Employee shall be fully reimbursed for any out-of-pocket expenses reasonably incurred by Employee in the course of such cooperation.

(b) Each of the parties to this Agreement irrevocably and unconditionally waives the right to a trial by jury in any action, suit or proceeding arising out of, connected with or relating to this Agreement, the matters contemplated hereby, or the actions of the parties in the negotiation, administration, performance or enforcement of this Agreement.

11. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and permitted assigns. This Agreement shall also inure to the benefit of and be binding upon Employee, Employee's executors, administrators and heirs.

13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with, the laws of the State of New York without regard to conflict or choice of law provisions or rules that would defer to the substantive laws of another jurisdiction. Any suit or proceeding arising from the subject matter of this Agreement shall only be brought in the state or federal courts located in the city of New York in the State of New York. The parties agree that such venue is appropriate and waive any and all rights to contest the exclusive personal jurisdiction and venue of such courts.

14. No Third Party Beneficiaries. Nothing contained in this Agreement, whether express or implied, is intended, or shall be deemed, to create or confer any right, interest or remedy for the benefit of any person other than as otherwise provided in this Agreement.

15. **Entire Agreement.** This Agreement and any Separation Release executed pursuant to **Section 2(b)** of this Agreement supersede all prior employment or other agreements, negotiations or understandings of any kind with respect to the subject matter hereof and contain the entire understanding between the parties hereto with respect to the subject matter hereof. Any representation, premise or condition, whether written or oral, not specifically incorporated herein, shall have no binding effect upon the parties.

16. **Headings.** The headings contained in this Agreement are included for convenience and reference purposes only and shall be given no effect in the construction or interpretation of this Agreement.

17. **Amendments.** No modification, termination or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the same is sought to be enforced.

18. **Survival.** To the extent consistent with their terms, the covenants in **Sections 2, 3, 6, 7, 9, 10, 11, 13 and 18** hereof shall survive the termination or expiration of this Agreement and the termination of Employee's employment hereunder.

19. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

EMPLOYEE

Michael DuMoulin

EPSILON US INC.

By: _____
Name:
Title:

Schedule of Assumed Agreements¹

Counterparty to Contract	Description of Contract	Cure Amount
60 Hudson Owner, LLC	Lease Agreement, dated as of November 21, 2011, by and between with 60 Hudson Owner, LLC and Metcom Network Services, Inc., as amended.	\$1,884,314.66
75 Broad, LLC	Lease Agreement, dated as of July 15, 2009, by and between 75 Broad, LLC and Metcom Network Services, Inc.	\$99,875
190 Realty Corp.	Lease Agreement, dated as of December 15, 2010, by and between 190 Realty Corp. and Metcom Network Services, Inc., as extended as of April 1, 2015.	\$3,200.00
Abovenet Communications, Inc.	Master Products and Services Agreement, dated December 31, 2003, by and between Abovenet Communications, Inc. and Metcom Network Services, Inc. and all related Letters of Authorization.	\$0
Abovenet Communications, Inc.	Letter of Authority, dated July 2007, from Abovenet.	\$0
Abovenet Communications, Inc. (Zayo Group)	Lease Fiber Product Order, dated August 10, 2015, by and between AboveNet/Zayo Group and Metcom Network Services, Inc.	\$8,542
Alliance Communications	Service Orders 381, 397, 585, 4237, 5603, 6078, 6208, 6209, 6439, 7028 and 7235	\$0
Allstate Ins. Co.	Service Orders 7564, 7565 and 7577	\$0
American Registry for Internet Numbers	Invoice Number SI258597, dated April 29, 2016, between American Registry for Internet Numbers and Metcom Network Services, Inc.	\$0

¹ Buyer is not assuming the Master Equipment Lease (the “NFS Lease”) between the Seller and NFS Leasing, Inc. (“NFS”), however, consistent with Buyer’s obligations pursuant to Sections 10(a)(xiv) and 10(b)(iv) of the Agreement, Buyer is agreeing to pay to NFS an amount of up to \$1,085,493.25, as necessary, to resolve the NFS secured claim and terminate the NFS Lease.

ArenaOne	Service Orders 7634 and 7834	\$0
Ascent Media Network Services	Service Order 4911	\$0
AT&T	Invoice and Related Mobile Phone Plan (account number 821254266), invoice due date December 2, 2016, between AT&T and Metcom Network Services, Inc.	\$0
AT&T SNET	Service Order 3274	\$0
Atlantic Metro Communications	Service Orders 5120, 7313, 7314, 7315, 7316, 7317, 7358, 7466, 7467, 7518, 7520, 7521, 7526, 7528, 7531, 7532, 7536, 7537, 7538, 7539, 7552, 7553, 7554, 7555, 7563, 7571, 7608, 7661, 7685, 7766, 7780 and 7837	\$0
Beers Enterprises, LLC DBA The Switch	Service Orders 6810, 6932, 7626, 7627, 7701 and 7843	\$0
Birch	Service Orders 6028, 6135, 6971 and 7562	\$0
Bluetone Communications, LLC	Service Order 5870	\$0
Broadview Networks, Inc.	Master Service Agreement MNS Inc., dated April 8, 2012, by and between Metcom Network Services Inc. and Broadview Networks, Inc.	\$0
Broadview Networks, Inc.	Service Orders 4411, 4538, 4638, 5511, 5934, 5937, 6311, 6597, 7158, 7254 and 7825	\$0
CAF Vets, LLC	Agreement to Lease, dated January 22, 2007, by and between CAF Vets, LLC and Metcom Network Services, Inc., as amended as of September 2011.	\$10,578.12
Cedar Cable Ltd.	Service Order 4915	\$0
CFN Services, Inc.	Service Order 5208	\$0
Charter Communications (Time Warner Cable Inc.)	Service Orders 5911, 5912, 5913, 5914, 5941, 5960, 5983, 6093, 6118, 6120, 6162, 6163, 6457, 6774, 7392, 7622, 7749, 7750, 7751 and 7752	\$0

Cleareon Fiber Networks, LLC	Service Order 7517	\$0
Cogent Communications, Inc.	Master Services Agreement, dated September 10, 2007, by and between Cogent Communications, Inc. and Metcom Network Services, Inc.	\$0
Cogent Communications, Inc.	Collocation Agreement, dated January 1, 2015, by and between Metcom Network Services, Inc. and Cogent Communications Inc.	\$0
Cogent Communications, Inc.	Service Orders 1549, 1553, 1676, 4707, 5582, 5583, 5595, 5596, 5798 and 5819	\$0
CRC International Inc.	Collocation Agreement, dated May 1, 2014, by and between CRC International Inc. and Metcom Network Services, Inc.	\$0
CRC International Inc.	Service Orders 7125, 7162, 7163, 7164, 7165, 7169, 7193, 7226, 7347, 7349, 7484, 7573, 7578, 7579, 7581, 7597, 7598, 7648, 7678, 7717, 7762, 7774, 7803, 7804, 7828 and 7836	\$0
Critical Media	Service Orders 5674, 5675, 6859 and 7624	\$0
Cross River Fiber	Service Order 7769	\$0
CSDNET	Sales Quotation Number 2016-7256, dated February 19, 2016, from CSDNET billed to Metcom Network Services, Inc. (Genetec Security System).	\$0
Delatcom	Service Orders 3538, 3626, 3639, 3647, 3651, 3793, 3794, 3795, 3797, 3799, 3829, 3875, 3886, 3888, 3916, 3925, 3949, 3972, 4124, 4128, 4392, 4393, 4548, 4550, 4604, 4605, 4610, 4726, 4782, 4950, 5033, 5034, 5604, 5688, 5690, 5696, 5705, 5733, 5735, 5740, 5751, 5822, 5822, 5850, 6422, 6427, 6599 and 7447	\$0
Deutsche Telekom North America, Inc.	Service Orders 5160, 5184, 5207, 5221, 5361, 5379, 5548, 5598, 6469, 6475, 6500, 6677, 6694, 6816, 6856, 7018, 7061, 7116, 7171, 7370, 7375, 7386, 7388, 7389, 7390, 7391, 7397, 7402, 7411, 7430, 7433, 7469, 7470, 7498, 7499, 7566, 7567, 7568, 7614, 7615,	\$0

	7616, 7617, 7687, 7799, 7829, 7830, 7832 and 7833	
Epsilon	Service Order 7815	\$0
Eurovision Americas, Inc.	Service Orders 4558 and 5169	\$0
Everest Broadband Networks	Letter of Authorization, dated October 27, 2015, from Everest Broadband Networks and related Subscriber Agreement.	\$4,498.63
EXPEREO USA, Inc.	Master Services Agreement #0230, dated July 8, 2015 between Metcom Network Services, Inc. and EXPEREO USA, Inc.	\$0
ExteNet Systems, Inc.	Master Services Agreement, dated October 10, 2012, by and between ExteNet Systems Corp. and Metcom Network Services, Inc., and related service orders.	\$2,704.71
ExteNet Systems, Inc.	Letter of Authorization from ExteNet Systems, Inc. dated December 4, 2014.	\$0
ExteNet Systems, Inc.	Service Orders 1849, 4994, 5115, 5529, 5540, 5602, 5647, 6709, 6715, 6811, 6812, 6828, 6829, 6939, 6944, 6945, 6950, 6954, 6961, 6962, 7002, 7031, 7058, 7064, 7107, 7181 and 7227	\$0
Eze Castle Integration	Service Order 7229	\$0
FiftyThree, Inc.	Service Order 6903	\$0
GC Pivotal, LLC d/b/a Global Capacity	Master Services Agreement #0226, dated June 4, 2015, by and between Metcom Network Services, Inc. and GC Pivotal, LLC d/b/a Global Capacity, including legacy Master Services Agreement #155 with Coval Communications Company.	\$0
Global Capacity Net	Service Orders 1539, 2071, 2539 and 3702	\$0
Global Crossing Telecommunications (Level 3)	Service Orders 1182, 4287, 5357, 5358, 5424 and 5429	\$0
Global Telecom & Technology Corporation.	Master Services Agreement MSA ID: 0141, dated January 9, 2009, by and between Metcom Network Services, Inc.	\$0

	and Global Telecom & Technology Corporation.	
GlobeCast America	Service Order 4206	\$0
Globo International, Limited	Authorization Letter, dated July 20, 2007, from Globo International, Limited.	\$0
GoDaddy	Invoice Number 915225251 and Related Customer Account 25054678, dated December 21, 2015, from GoDaddy billed to M. Dumoulin (domain registration).	\$0
Graphnet	Service Orders 6901, 6937, 7076, 7570 and 7684	\$0
GTT	Service Orders 6872 and 7022	\$0
Herbert Redl, Inc.	Lease Agreement, dated as of June 1, 1996, by and between Herbert Redl, Inc. and Metcom Network Services, Inc., as amended May 29, 2013.	\$2,400
Hibernia	Service Orders 5392, 5847, 5884, 5970, 6576 and 6900	\$0
Hibernia Atlantic U.S. LLC	Master Services Agreement ID: 0142, dated January 8, 2009, between Metcom Network Services, Inc. and Hibernia Atlantic U.S. LLC.	\$0
Hudson Fiber Network	Service Order 7505, dated July 30, 2015, between Metcom Network Services, Inc. and Hudson Fiber Network.	\$0
Hudson Fiber Network	Service Orders 7505, 7611, 7677, 7679, 7680, 7681, 7710 and 7722	\$0
Hurricane Electric	Internet Services Agreement, dated March 28, 2013, by and between Hurricane Electric and Metcom Network Services, Inc.	\$0
IDT Telecom Inc.	Service Orders 6793, 6794, 6796, 6797, 6798, 6822, 7657, 7658, 7704 and 7757	\$0
Impact	Service Orders 5167, 5178, 5302, 6044, 6417, 6592, 6593, 6595, 6687, 6783, 6893, 7059, 7242, 7438, 7452, 7515, 7662, 7667 and 7670	\$0

Inmarsat	Service Order 7655	\$0
Innovative Systems Design	Service Orders 7816, 7817, 7818, 7819, 7820, 7821, 7822, 7839, 7840 and 7846	\$0
Internap Network Services Corp.	Service Orders, dated October 28, 2010 and March 11, 2011, by and between Internap Network Services Corp. and Metcom Network Services, Inc.	\$0
International Discount Telecom. Inc.	Master Services Agreement 0161, dated May 8, 2013, by and between Metcom Network Services, Inc. and International Discount Telecom. Inc.	\$0
ION HoldCo, LLC	Master Services Agreement #160, dated April 19, 2012, by and between Metcom Network Services, Inc. and ION HoldCo, LLC.	\$0
ION	Service Order 6304	\$0
ISPnet, Inc.	Service Order 3437	\$0
JVC Broadcasting	Service Order 7580	\$0
Level 3 Communications	Service Orders 570, 1603, 2298 and 3458	\$0
Lexent Metro Connect, LLC	Exchange Agreement, dated November 16, 2009, by and between Lexent Metro Connect, LLC and Metcom Network Services, Inc., as amended including that certain Dark Fiber Lease Master Agreement dated as of the same date between the same parties.	\$8,282
Lighttower Fiber Networks, LLC	Mutual Master Service Agreement MNS Inc. MSA ID: 781, dated March 2010, by and between Metcom Network Services, Inc. and Lighttower Fiber Networks, LLC.	\$17,908.61
Lighttower Fiber Networks, LLC	Service Orders 4302 and 7236	\$0
Logic	Service Order 7665	\$0
Long Island Fiber Exchange, Inc.	Service Orders 2600, 3706, 3707, 3708, 3709, 3710, 3901, 3902, 3911, 4011, 4012, 4025, 4026, 4464, 4724, 4830,	\$0

	4909, 4910, 4937, 4974, 5292, 5337, 5341, 5353, 5409 and 5677	
M5 Networks	Service Orders 4652, 5754 and 7286	\$0
M5 Telecom USA Inc.	Master Services Agreement MSA ID: 0181, dated February 1, 2012, between Metcom Network Services, Inc. and M5 Telecom USA Inc.	\$0
Marcatel Com	Service Orders 6979, 6981, 7288 and 7318	\$0
Market Halsey Urban Renewal, LLC	Meet Point Room License Agreement, dated June 15, 2012, by and between Market Halsey Urban Renewal, LLC and Metcom Network Services, Inc., as amended, and related service orders.	\$0
Mighty	Service Orders 7600 and 7601	\$0
Mobilitie Investments II, LLC (successor ExteNet Systems, Inc.)	Fiber Lease Agreement, dated July 31, 2008, by and between Mobilitie Investments II, LLC and Metcom Network Services, Inc., as amended and including all other Fiber Lease Agreements between the parties or any successors in interest or assigns thereof, including, without limitation, ExteNet Systems, Inc Lease Number FLA#6.	\$0
Merit Network Inc.	Invoice Number 251821, dated September 21, 2016, between Merit Network Inc. and Metcom Network Services (RADb Service).	\$0
Microsoft	MSDN Subscription Order Number 10653464966, dated August 24, 2016, from Microsoft.	\$0
MTN	Service Orders 3506, 3843, 4157, 4170, 5155, 5226, 5465, 5636, 6570, 6820 and 6880	\$0
MTN Government	Service Orders 7101, 7102, 7138 and 7231	\$0
Natural Wireless, LLC	Service Orders 4569, 4690, 4930, 5186, 6717, 6787, 6799, 6891, 6973, 7232, 7233, 7234, 7379, 7441, 7442, 7443,	\$0

	7444, 7445, 7489, 7490, 7491, 7492, 7493, 7494, 7496, 7497, 7587 and 7683	
Natural Wireless, LLC	Natural Wireless Service Agreement, dated November 26, 2013 between Natural Wireless, LLC and Metcom Network Services, Inc.	\$0
NBS Voice, Inc.	Service Orders 6031, 7087 and 7089	\$0
NBS Voice, Inc.	Master Services Agreement #119, dated June 5, 2009, by and between NBS Voice, Inc. and Metcom Network Services, Inc.	\$0
Neon Communications, Inc.	Service Orders 1492, 1797 and 1798	\$0
Network Innovations US Inc.	Service Order 7374	\$0
Neutral Tandem, Inc.	Master Service Agreement, dated August 11, 2011, by and between Neutral Tandem, Inc. and Metcom Network Services, Inc.	\$0
New Edge Networks/Earthlink	Service Orders 5827 and 7106	\$0
N-Plus Systems LLC	Collocation Agreement, by and between Metcom Network Services, Inc and N-Plus Systems LLC.	\$0
N-Plus Systems LLC	Oral Sublease, whereby Metcom Network Services, Inc. is subleasing space to N Plus Systems LLC under an unwritten month-to-month collocation agreement, in Suite 1001, 60 Hudson Street, New York, New York.	\$0
N-Plus Systems LLC	Service Orders 4593, 4594, 4595, 4596, 4598, 4599, 4651, 4696, 4711, 4716, 4824, 4905, 4944, 4964, 5053, 5096, 5100, 5127, 5128, 5130, 5154, 5165, 5239, 5247, 5248, 5249, 5271, 5290, 5291, 5385, 5386, 5388, 5444, 5461, 5470, 5477, 5478, 5479, 5480, 5487, 5488, 5534, 5542, 5569, 5572, 5573, 5576, 5627, 5633, 5638, 5725, 5726, 5727, 5978, 6034, 6035, 6042, 6043, 6210, 6211, 6221, 6314, 6315, 6447, 6452, 6454, 6566, 6772, 6778, 6779, 6788, 6805, 6845, 6953, 6991, 7062, 7079, 7086, 7104, 7105, 7174, 7182, 7225, 7327, 7395, 7416, 7436, 7671 and	\$0

	7672	
NTT America	Internet Access Service Agreement, dated November 20, 2015, between Metcom Networks and NTT America.	\$0
One Communications Corp.	Service Orders 4617, 5219, 5712, 5757, 6112, 6533, 6544, 6545, 6603 and 6615	\$0
One Communications Corp.	Wholesale Services Agreement, dated February 27, 2008, by and between One Communications Corp. and Metcom Network Services, Inc.	\$0
Onvoy	Service Orders 6455 and 6747	\$0
Optimum	Optimum Account Number 07840-173245 as set forth on Invoice, dated October 21, 2016, from Optimum billed to MNSIN C (CableVision).	\$0
Optical Communications Group Inc.	Master Services Agreement, dated October 19, 2011, between Optical Communications Group Inc. and Metcom Network Services, Inc.	\$0
OrderGrove, Inc.	Service Orders 6731, 6733, 6734, 6735, 6762, 6766, 6767, 6768, 6769, 6770, 6771, 6814, 6825, 6831, 6946, 6958, 7371, 7530, 7730, 7768, 7788 and 7797	\$0
PAETEC Communications, Inc.	Master Services Agreement, dated April 6, 2005, between Metcom Network Services, Inc. and PAETEC Communications, Inc.	\$0
Peer 1 Network (USA), Inc.	Service Orders 3491, 5099, 5657, 5774, 7026 and 7645	\$0
Peer 1 Network (USA), Inc.	Bandwidth Services Contract, dated May 8, 2009, between Peer 1 Network (USA), Inc. and Metcom Network Services, Inc.	\$0
Peerless Network	Service Orders 5282, 6108, 6109, 6121, 6144, 6164, 6169, 6305, 6808, 7293, 7344, 7346, 7703, 7709 and 7715	\$0
Peerless/Voex	Service Orders 4434, 5500 and 5856	\$0

PEG Bandwidth, LLC	Service Orders 7066, 7067, 7068, 7070, 7112, 7113, 7191, 7272, 7273, 7473 and 7556	\$0
PEG Bandwidth, LLC	Master Services Agreement #0222, dated March 7, 2014, between Metcom Network Services, Inc. and PEG Bandwidth, LLC.	\$0
PenTeleData	Service Order 7471	\$0
Perseus Telecom	Service Orders 7063, 7707 and 7708	\$0
Pilot	Service Orders 7400 and 7516	\$0
Pilot Bandwidth	Mutual Master Service Agreement MSA ID: 795, dated February 6, 2015, by and between Pilot Bandwidth and Metcom Network Services, Inc.	\$0
Pilot Fiber NY LLC	Reciprocal Non-Disclosure Agreement, dated December 10, 2014, between Metcom Network Services, Inc. and Pilot Fiber NY LLC.	\$0
Progress Technology Solutions	Service Orders 4837, 4838, 4839, 4857, 4858, 4859, 5163, 5318, 6048, 7033, 7098 and 7824	\$0
Qwest	Service Orders 506, 2918 and 5610	\$0
RCN New York Communications LLC	Master Services Agreement MSA ID: 0136, dated June 11, 2008, by and between RCN New York Communications LLC and Metcom Network Services, Inc.	\$0
Reliance/Global Cloud Exchange	Service Orders 1390, 1686, 1766, 3001, 3662 and 3879	\$0
Rockefeller Group Technology Solutions	Letter of Authority from Rockefeller Group Technology Solutions dated June 20, 2013.	\$0
Rockefeller Group Technology Solutions	Service Order 6824	\$0
SCAME	Service Order 7324	\$0
Sidera	Service Orders 5834, 6025, 6496, 6585, 6936, 6952 and 6956	\$0

Silverstein Properties	Letter of Authorization, dated December 18, 2008, from Silverstein Properties.	\$0
Sirius Telecommunications, Inc.	Master Services Agreement, dated May 14, 2008, by and between Sirius Telecommunications, Inc. and Metcom Network Services, Inc.	\$0
Sirius Telecommunications, Inc.	Service Orders 4177 and 5555	\$0
Sprint Communications Company L.P.	Facilities and Services Agreement, dated July 27, 1999, by and between Sprint Communications Company L.P. and Metcom Inc., and all related agreements.	\$0
Sprint Network	Service Orders 5586 and 7572	\$0
Switch and Data Management Company	Mutual Master Service Agreement MSA ID: 773, dated May 4, 2009, by and between Switch and Data Management Company and Metcom Network Services, Inc.	\$0
Tandem Transit LLC	Master Services Agreement #229, dated April 1, 2013, between Metcom Network Services, Inc. and Tandem Transit LLC.	\$0
Tandem Transit LLC	Service Orders 6708, 6714, 6720, 6760, 6763, 6860, 6861, 6862, 6871, 6873, 6883, 6898, 7364, 7406, 7407, 7417, 7418, 7422, 7434 and 7459	\$0
Tata	Service Orders 938, 1135, 7439 and 7656	\$0
Telehouse International Corporation of America	Master Services Agreement, dated October 30, 2008, by and between Telehouse International Corporation of America and Metcom Network Services, as amended or modified and including Colocation Service Order #12310 dated July 29, 2016 and the related Master Services Agreement, and related service orders.	\$0
Telia International Carrier, Inc.	Private Network Agreement, dated September 30, 2002, between Telia International Carrier, Inc. and Metcom, Inc.	\$0

Telx Group, Inc.	Colocation Facilities License Agreement, dated February 5, 2003, between the Telx Group, Inc. and Metcom Network Services, Inc., as amended February 1, 2014.	\$0
Telx NY	Service Order 1527	\$0
Time Warner Cable Inc.	Master Services Agreement, dated November 23, 2011, by and between Metcom Network Services, Inc. and Time Warner Cable Inc.	\$0
TNS	Service Orders 4866, 5042, 5691, 5997, 6441, 6896, 7053, 7054 and 7238	\$0
Transaction Network Services, Inc.	Master Services Agreement #0120, dated November 19, 2007, between Metcom Network Services, Inc. and Transaction Network Services, Inc.	\$0
TRCO	Service Order 7188	\$0
TriNet HR Corporation	TriNet Passport Services Requisition Form, dated February 25, 2016, between Metcom Network Services, Inc. and TriNet HR Corporation.	\$0
Tri-Tech Associates	Service Orders 6318, 6433, 6434, 6435, 6568, 6666, 6764, 6807, 6869, 6992, 7237, 7688, 7689, 7690 and 7795	\$0
T-Systems North America Inc.	Service Orders 5527, 5967, 6029, 6711, 7078, 7257, 7533 and 7590	\$0
T-Systems North America Inc.	Master Services Agreement, dated July 10, 2008, by and between Metcom Network Services, Inc. and T-Systems North America Inc.	\$0
United Network Services Inc. / IPNetZone	Service Order 5686	\$0
Urban Resource Institute	Service Orders 7362 and 7372	\$0
USA Mobility Wireless - Amcom Software	Service Orders 5770 and 5771	\$0
VoIP Logic	Service Orders 7380 and 7775	\$0

VOIP Tycoon JLT	Service Orders 6681, 6684, 6685, 6724, 6725, 6726 and 7333	\$0
VTEL	Service Orders 6866 and 6935	\$0
vXchnge	Sales Order #SO1618, dated January 9, 2015, between vXchnge and Metcom Network Services, Inc.	\$0
WDT	Service Orders 232, 625, 1142, 1143, 1564, 1580, 1581, 1738, 1739, 1743, 1744, 1801, 1809, 1811, 1823, 1888, 2000, 2415, 2416, 2417, 2418, 2419, 2420, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2492, 2579, 2662, 2687, 3173, 3282, 3292, 3309, 3310, 3407, 3467, 3573, 3666, 3667, 3668, 3669, 3681, 3850, 3978, 3982, 4221, 4312, 4487, 4902, 4949, 4976, 5003, 5037, 5129, 5141, 5293 and 5425	\$0
Westar Satellite Services	Service Order 4844	\$0
Windstream	Invoice and Related Account Number 2522098, dated March 1, 2016, between Windstream and Metcom Network Services, Inc.	\$0
Windstream	Service Orders 3517, 3614, 3615, 3867, 4247, 5257, 5792, 5845, 5969, 6525, 6527, 6781, 6804, 6806, 6823, 6839, 6841, 6850, 6875, 6876, 6931, 6943, 7036, 7243, 7464, 7481, 7486, 7488 and 7613	\$0
WorkCompEdi	Service Orders 7718, 7719, 7737, 7738 and 7770	\$0
XO Communications Services, Inc.	Master Services Agreement #156, dated August 26, 2013, along with the second Master Services Agreement #156, dated November 29, 2010, between Metcom Network Services, Inc. and XO Communications Services, Inc.	\$0
XO Communications Services, Inc.	Service Orders 571, 3918, 4556, 6867 and 7291	\$0
Zayo Bandwidth, LLC	Mutual Master Service Agreement MSA ID: 780, dated April 2011, by and between Zayo Bandwidth, LLC and Metcom Network Services, Inc.	\$0

Zayo Bandwidth, LLC	Colocation and Services Agreement ID: 780, dated August 10, 2012, between Metcom Network Services, Inc. and Zayo Bandwidth, LLC.	\$0
Zayo Bandwidth, LLC	Service Order 2060, 7739 and 7841	\$0
ZenFi Networks	Exchange Agreement, dated May 28, 2015, by and between ZenFi Networks and Metcom Network Services, Inc.	\$0
ZenFi Networks	Service Orders 7440, 7465, 7485, 7595, 7666, 7686, 7698, 7702, 7713, 7743, 7744, 7745, 7763, 7765, 7767, 7776, 7777, 7778, 7779, 7783, 7790, 7794, 7823, 7831	\$0

Schedule of Equipment

Reference is hereby made to all of the equipment listed on Schedule D of the NFS Lease, as attached hereto.

Schedule of Rejected Agreements

1. Service Order 477307 between Metcom Network Services, Inc. and Zayo Bandwidth, LLC
2. Preventative Maintenance Agreement, dated January 7, 2009, between Metcom Network Services, Inc. and BP Air Conditioning Corp.

Schedule of Customers

1. 190 Blydenburgh
2. Alliance Communications
3. Allstate Ins Co
4. ArenaOne
5. Ascent Media Network Services
6. Atlantic Metro Communications
7. Atlantic Metro Communications/Power
8. ATT Diversified Group
9. Beers Enterprises, LLC DBA The Switch
10. Bluetone Communications, LLC
11. Cedar Cable Ltd.
12. CFN Services, Inc
13. Cleareon Fiber Networks, LLC
14. Cogeco Peer 1
15. Cogent Communications, Inc.
16. CRC
17. Critical Mention (Media)
18. Cross River Fiber
19. Deltacom
20. Deutsche Telekom North America, Inc
21. Eurovision Americas, Inc.
22. Excel Telecommunications
23. ExteNet Systems, Inc.
24. Eze Castle Integration
25. FiftyThree, Inc.
26. Global Crossing Americas Solutions, Inc
27. Global Crossing/Level 3
28. Globecast America
29. Graphnet USA
30. Green Moss Partners C
31. Hudson Fiber Network
32. ITsavvy
33. JVC Broadcasting
34. Level 3 Communications
35. Lighttower Fiber Network-HV
36. Logic
37. Long Island Fiber Exchange, Inc. (NA)
38. Marcatel Com
39. MegaPath
40. Mighty
41. MTN Government
42. MTN Satellite
43. N-Plus Communications

44. Natural Wireless
45. Natural Wireless/Power
46. NBS
47. Network Innovations US Inc
48. NEW EDGE NETWORKS
49. One Communications Corp
50. Onvoy
51. OrderGroove Inc
52. Pangaea Networks, Inc
53. Peerless Network
54. Peerless/Voex
55. PenTeleData
56. Perseus Telecom
57. Pilot
58. Progress Technology Solutions
59. Qwest Communications/Century Link
60. Reliance Globalcom Services, Inc.
61. SCAME
62. Sidera/Neon Communications/Lighttower
63. Sidera/RCN
64. Sirius Telecom
65. Sprint Network
66. TaTa Communications America
67. TaTa Communications
68. TRCO
69. Tri-Tech Associates
70. United Network Services / IPNetzone
71. Urban Resource Institute
72. USA Mobility Wireless
73. Vermont Telephone Company, Inc.
74. VoIP Logic
75. VOIP Tycoon JLT
76. Westar Satellite Services, LP
77. WorkComp EDI
78. World Discount Telecommunications
79. Zayo Bandwith
80. ZenFi
81. ZenFi/power
82. Expereo
83. TV Globo

Schedule of Seller's Agreements

Reference is hereby made to all of the agreements listed in the Schedule of Assumed Agreements and all of the agreements listed in the Schedule of Rejected Agreements.

Schedule of Excluded Claims and Rights

Rights, claims and causes of action of Seller against N Plus Systems, LLC.

Schedule 7(a) Transferred Employees

1. Mark DuMoulin Sr.
2. Mark DuMoulin II
3. Michael DuMoulin
4. Susan DuMoulin
5. Jennifer Felty
6. Sergey Shusunov
7. April Willi
8. Timothy Mangan Sr.
9. Timothy Mangan Jr.

Schedule A

Name	Annual Salary	Benefits
Mark DuMoulin Sr.	\$206,700	Annual PPO-Vision-Dental
Mark DuMoulin II	\$181,725	Annual PPO-Vision-Dental \$569.12 per month for garage expenses; \$410 per month for family gym membership
Michael DuMoulin	\$164,639.80	Annual PPO-Vision-Dental \$485.96 per month for IRR and MTA expenses; \$342.50 per month for Verizon Wireless Mobile
Susan DuMoulin	\$124,754.05	Annual PPO-Vision-Dental
Jennifer Felty	\$87,531.62	Annual PPO-Vision-Dental
Timothy Mangan Jr.	\$42,400	Annual PPO-Vision-Dental \$397.76 per month for IRR and MTA expenses
Timothy Mangan Sr.	\$112,565.40	Annual PPO-Vision-Dental \$397.76 per month for IRR and MTA expenses
Sergey Shusunov	\$85,834.56	Annual PPO-Vision-Dental
April Willi	\$58,498.48	Annual PPO-Vision-Dental

Note: With the exception of Michael DuMoulin whose phone is reimbursed per the chart above, all employees are provided phones under the AT&T Company Shared Voice and Data Plan which costs the Company an aggregate of \$1600 per month.