EXHIBIT A

APA
ASSET PURCHASE AGREEMENT

by and among

THOMPSON PUBLISHING HOLDING CO., INC.,
TPG AES HOLDING CO., INC.,
THOMPSON PUBLISHING DEVELOPMENT LLC,
THOMPSON PUBLISHING GROUP, INC.,
ALEX ESOLUTIONS, INC.,
AHC MEDIA LLC,
THE PERFORMANCE INSTITUTE, INC.

and

PNC BANK, NATIONAL ASSOCIATION

Dated as of September 21, 2010
ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of September 21, 2010, is made by and among Thompson Publishing Holding Co., Inc., a Delaware corporation (“Parent”), TPG AES Holding Co., Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (“TAH”), Thompson Publishing Group, Inc., a Delaware corporation and a wholly-owned subsidiary of TAH (“TPG”), Thompson Publishing Development LLC, a Delaware limited liability company and a wholly-owned subsidiary of TPG (“TPD”), Alex eSolutions, Inc., a Delaware corporation and a wholly-owned subsidiary of TAH, d/b/a Sheshunoff Information Services and A.S. Pratt (“SIS”), AHC Media LLC, a Delaware limited liability company and a wholly-owned subsidiary of TAH (“AHC”), The Performance Institute, Inc., a Virginia corporation and a wholly-owned subsidiary of TAH (“TPI” and, together with TAH, TPG, TPD, SIS and AHC, the “Subsidiaries”; the Subsidiaries together with the Parent are referred to as the “Sellers”) and PNC Bank, National Association, as agent for and on behalf of the Lenders identified (and as defined) in the Credit Agreement or its permitted successors and assigns (“Buyer”). Capitalized terms used in this Agreement are defined or cross-referenced in Article 11.

INTRODUCTION

WHEREAS, Sellers anticipate filing voluntary petitions for relief (collectively, the “Filing”) commencing voluntary cases for reorganization (the “Bankruptcy Cases”) under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (or such other court having competent jurisdiction over such case, the “Bankruptcy Court”, and the date of the Filing, the “Petition Date”);

WHEREAS, Sellers are engaged in the business of publishing subscription-based regulatory and compliance information and providing information and continuing education for healthcare professionals (the “Business”).

WHEREAS, the Business has operating facilities located in the District of Columbia, Arlington, Virginia, Tampa, Florida, Atlanta, Georgia and Austin, Texas.

WHEREAS, Buyer desires to purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desire to sell, convey, assign and transfer to Buyer the Acquired Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Sellers and Buyer hereby agree as follows:
ARTICLE 1
PURCHASE AND SALE OF THE ACQUIRED ASSETS

1.1 Transfer of Acquired Assets. At the Closing, and upon the terms and conditions herein set forth, Sellers shall sell to Buyer, and Buyer shall acquire from Sellers, the Acquired Assets free and clear of all Liens, other than Permitted Liens. "Acquired Assets" shall mean all of the business and operations of Sellers related to the Business and all of the assets and properties of Sellers of every kind and description, wherever located, real, personal or mixed, tangible or intangible, used primarily in connection with the Business as the same shall exist on the Closing Date, including all of Sellers’ right, title and interest in, to and under the following property, rights and assets, but shall exclude the Excluded Assets:

(a) all of Sellers’ cash and cash equivalents, including all petty cash and undeposited checks, commercial paper, treasury bills, certificates of deposit and other bank deposits as of the Closing Date, but excluding (i) an amount necessary to satisfy any Carve-Out (which amount shall be subject to the final determination of the Carve-Out in accordance with the Final DIP Order); (ii) Cure Costs (as defined herein); and (iii) any additional amounts to be determined in connection with any wind-down budget agreed to between Buyer and Sellers as attached hereto as Schedule 1.1(a), which schedule shall be subject to adjustment prior to Closing with the consent of the agent under the DIP Credit Agreement, the lenders under the DIP Credit Agreement, the agent under the Credit Agreement and the requisite lenders under the Credit Agreement (the "Wind-Down Budget");

(b) all notes, accounts receivable (including any loans and notes payable to Sellers from any Business Employee) and all unbilled accounts receivable for those Designated Executory Contracts (as defined below) and/or statements of work that do not permit the Sellers to invoice a client for partially completed work or for work performed for which the Sellers have not yet created an invoice included in an account receivable;

(c) all (i) of Sellers’ equipment, machinery, computer hardware, furniture, fixtures and improvements, and other tangible assets and interests therein (collectively, "Personal Property"), including such Personal Property held at any location controlled or used by Sellers, such Personal Property previously purchased and in transit and any such Personal Property held by a customer or prospective customer of Sellers and (ii) of Sellers’ right, title and interest in and to the equipment, machinery, computer hardware, furniture, fixtures and improvements, tooling and spare parts and other tangible assets that are leased pursuant to a Designated Executory Contract;

(d) the leaseholds, subleaseholds, and other interests of Sellers in the real property set forth on Schedule 1.1(d) (collectively, "Property"), in each case, including all interest of Sellers in the underlying land, all buildings, structures and improvements thereon, all fixtures and fittings attached thereto and contained therein, together with all appurtenances thereto; provided that any such leasehold or subleasehold and interests related thereto shall be included only if the related lease or sublease constitutes a Designated Executory Contract;

(e) all leases and other Contracts entered into by Sellers that are unexpired or executory as of the Closing Date that are designated by Buyer and attached hereto as Schedule
1.1(e) (as such list is updated in accordance with this Agreement, the “Designated Executory Contracts”); provided, however, that Buyer will have an opportunity to amend the list of Designated Executory Contracts by a date that is five (5) Business Days prior to the auction for the Acquired Assets described in the Bidding Procedures attached hereto as Exhibit A (the “Auction”) or, if there is no Auction, a date that is seven (7) Business Days prior to the Sale Hearing;

(f) any computer software, systems and applications (including previous versions and versions in development) and licenses related thereto;

(g) to the extent transferable under applicable Law, all permits, authorizations and licenses (the “Permits”) issued by any Government to Sellers and all pending applications therefor, including those Permits set forth on Schedule 1.1(g);

(h) (i) the registered trademarks and common law trademarks owned by Sellers (such registered trademarks are set forth on Schedule 1.1(h)) and service marks, trade names, logos and corporate names of Sellers; (ii) the copyrights (registered and unregistered) and copyrightable works of Sellers (such registered copyrights are set forth on Schedule 1.1(h)); (iii) patents, patent applications and patent disclosures of Sellers (such registered patents are set forth on Schedule 1.1(h)); (iv) any and all other rights in intellectual property of Sellers, including trade secrets, proprietary information, technology, know-how, domain names, inventions (whether patentable or not and whether or not reduced to practice), improvements, software and software applications (collectively, “Intellectual Property”); (v) any and all rights to sue for claims and remedies against past, present and future infringements of any or all of the foregoing, and rights for priority and protection of interests therein under the laws of any jurisdiction; (vi) tangible embodiments of any of the foregoing (in any medium, including electronic media); (vii) licenses or other contractual rights with respect to the intellectual property of any third party; and (viii) all goodwill relating to the foregoing and any and all applications, registrations and renewals (if any) for or relating to the foregoing;

(i) all inventory, including all inventory held for resale and all raw materials, work in process, finished products, shipments in transit, wrapping, supply and packaging items owned by Sellers (the “Inventory”);

(j) all motor vehicles owned by Sellers or related to, used in or held for use in connection with the Business, whether owned or leased;

(k) all rights of Sellers to the warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold to Sellers or to the extent affecting the Acquired Assets;

(l) any and all rights, claims, causes of action, known or unknown, pending or threatened (including all claims arising under Sections 510, 544 through 551 and 553 of the Bankruptcy Code or under similar state Laws including fraudulent conveyance claims, preference actions, all claims for professional negligence, malpractice or breach of fiduciary duty and all other claims of a trustee and debtor-in-possession under the Bankruptcy Code) or Qualified Rights of Set-Off (collectively, “Claims”), of the trustee or Sellers, including but not
limited to, Claims arising out of or relating in any way to the Bankruptcy Cases, or any of the transactions contemplated thereby or entered into as a consequence thereof;

(m) each outstanding purchase order or other commitment of Sellers relating to the Business to suppliers of goods and services for materials, supplies or other items and all rights of Sellers thereunder;

(n) all copies and originals of the lists, data and information pertaining to customers and suppliers of Sellers, trade correspondence, data storage tapes, accounts receivable ledgers, documents relating to invoices and all shipping records, whether in hard copy or electronic format;

(o) all copies and originals of all books, records, accounts, checks, payment records, personnel files, Tax records (including payroll, unemployment, real estate and other Tax records) and other similar books, records and information of Sellers, to the extent relating to the Business or the Acquired Assets, whether in hard copy or electronic format (the “Records”); provided, however, that Buyer shall provide Sellers access to the Records as provided in Section 5.2(d) and Section 6.4.

(p) all deposits, refund and offset rights, and prepayments of Sellers held by utilities or under any Designated Executory Contract that are assumed by and assigned to Buyer;

(q) to the extent related to the Business, the Acquired Assets or an Assumed Liability, all prepaid expenses, advance payments, surety accounts, deposits and other similar prepaid items, checks in transit and undeposited checks arising from the operation of the Business prior to the Closing;

(r) any rights, demands, Claims, credits allowances, rebates or other rights of set-off arising out of or relating to the Business or the Acquired Assets;

(s) all other intangible property rights, including goodwill, of Sellers relating to the Business or the Acquired Assets;

(t) to the extent reasonably practicable, all telephone, telex and telephone facsimile numbers and other directory listings relating to the Business or the Acquired Assets;

(u) any refunds of Taxes;

(v) any rights to proceeds of insurance policies covering the Acquired Assets or the Business, other than proceeds of Sellers’ primary tail policy with Darwin National Assurance Company regarding directors’ and officers’ insurance and related matters and Sellers’ excess tail policy with Westchester Fire Insurance Company regarding directors’ and officers’ insurance and related matters (collectively, the “Tail Policies”), including any refunds or proration of premiums and proceeds of any claim;

(w) all assets and insurance policies related to any Seller Benefit Plan that Buyer designates as a Designated Executory Contract pursuant to Section 1.4(a); and
(x) all other or additional privileges, rights, claims, causes of actions, options and interests associated with the Acquired Assets of every kind and description and wherever located.

1.2 Excluded Assets. The Acquired Assets do not include (i) any right, title or interest of any Person other than Sellers in any property or asset and (ii) the following properties and assets of Sellers (all such assets not being acquired by Buyer being herein referred to as the “Excluded Assets”):

(a) all of the capital stock and other equity interests in each Seller;

(b) all current and prior insurance policies of any of Sellers, other than (i) rights to proceeds thereof or recoveries therefrom (excluding proceeds and recoveries under the Tail Policies) in accordance with Section 1.1(v) or (ii) insurance policies described in Section 1.1(w);

(c) all receivables, claims or causes of action related primarily to any Excluded Asset; and

(d) all rights, claims or causes of action of Sellers arising under this Agreement or the Ancillary Agreements, including all right, title and interest to the Purchase Price.

1.3 Assumption of Liabilities. At the Closing, Buyer shall assume, and Buyer hereby agrees to thereafter pay, perform and discharge when due, and be responsible solely for, only the following liabilities and obligations (the “Assumed Liabilities”):

(a) [Reserved.]

(b) all liabilities and obligations of Sellers under the Designated Executory Contracts, and all cure costs (“Cure Costs”) required to be paid and all defaults required to be cured pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Designated Executory Contracts, provided that, Sellers shall be responsible for the verification of all Cure Costs for each Designated Executory Contract, including all administrative responsibilities associated therewith, in the Bankruptcy Cases and otherwise, and shall use reasonable best efforts to establish the proper Cure Cost, if any, for each Designated Executory Contract (as soon as practicable), including taking all reasonable actions with respect to the filing and prosecution of any pleadings in the Bankruptcy Court and the service and delivery of any related notices or pleadings;

(c) liabilities under Section 6.2 for Transfer Taxes payable in connection with the transactions contemplated under this Agreement;

(d) (i) the accounts payable of the Business incurred in the ordinary course of business and all claims arising in connection therewith, in each case after the Petition Date; provided that the accounts payable are incurred pursuant to and in accordance with the Approved Budget (as defined in the Final DIP Order), and (ii) certain accounts payable of the Business incurred in the ordinary course of business prior to the Petition Date (and all claims arising in
connection therewith) as designated by Buyer and set forth on Schedule 1.3(d), which Buyer may amend by a date that is five (5) Business Days prior to the Auction or, if there is no Auction, a date that is seven (7) Business Days prior to the Sale Hearing;

(e) all performance obligations of Sellers arising before or after the Closing Date and all payment obligations after the Closing Date in each case arising under Sellers’ outstanding agreements that are Acquired Assets: (i) relating to subscriptions for products, publications and services of the Business, (ii) with authors or other Persons contributing content to the products and publications of the Business and Persons providing services in connection with subscriptions, (iii) to provide audio conferences, live conferences, consulting, exhibiting and similar services, and (iv) with speakers, consultants and other service providers in connection with such services.

(f) all other liabilities and obligations arising as a result of the operation of the Business after the Closing;

(g) all other liabilities and obligations arising out of an event or occurrence exclusively after the Closing Date solely to the extent such liabilities and obligations relate to or arise out of the Acquired Assets;

(h) all confidentiality, non-competition or non-disclosure agreements executed by Sellers in favor of customers, vendors, employees or suppliers of Sellers or other third parties, in each case as existing after the Closing Date and relating to the Acquired Assets or the Assumed Liabilities and set forth on Schedule 1.3(h);

(i) all liabilities and obligations of Sellers pursuant to the Key Employee Incentive Plan adopted by the Board of Directors of TPG on June 17, 2010 (the “Key Employee Incentive Plan”); and

(j) all liabilities with respect to unused vacation days and other paid time off pursuant to Section 5.3(h), which liabilities are set forth on Schedule 1.3(j).

1.4 Retention of Liabilities. Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of whatever nature, whether presently in existence or arising hereafter. All such other liabilities and obligations shall be retained by, and remain liabilities and obligations of, Sellers (all such liabilities and obligations not being assumed being herein referred to as the “Excluded Liabilities”). The Excluded Liabilities include the following liabilities and obligations:

(a) all liabilities and obligations of Sellers relating to the Seller Benefit Plans (other than accrued but unused vacation days and other paid time off of the Transferred Employees and liabilities and obligations with respect to the Key Employee Incentive Plan); provided, however, that Buyer shall have the opportunity to designate each Seller Benefit Plan as a Designated Exe cutory Contract, and assume any liabilities or obligations relating thereto, by a date that is five (5) Business Days prior to the Auction or, if there is no Auction, a date that is seven (7) Business Days prior to the Sale Hearing;
(b) except to the extent otherwise provided by applicable Law, all liabilities and obligations of Sellers arising on or prior to the Closing Date, with respect to any Environmental Law and relating to the Business or the Acquired Assets;

(c) all Taxes with respect to the Business or the Acquired Assets that are attributable to or allocable to any Pre-Closing Tax Period, and, with respect to real and personal property Taxes for any Straddle Period, a percentage of such Taxes that relates to such period shall be provided and apportioned between Sellers and Buyer consistent with the proration provisions contained in Section 6.3; and

(d) all liabilities and obligations of Sellers relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services performed in connection with this Agreement or any of the transactions contemplated hereby, and any Pre-Petition or Post-Petition claims for such services (to the extent not included in the Carve-Out), which liabilities and obligations related to such services to be performed after the Closing Date are disclosed on Schedule 1.1(a).

1.5 Non-Assignment of Contracts. This Agreement shall not constitute an agreement to assign any Designated Executory Contract, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the Consent of the third party thereto, would be unenforceable. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such Consent is required but not obtained, then Sellers shall reasonably cooperate with Buyer on a reasonable temporary basis without further consideration in an arrangement designed to both (a) provide Buyer with the benefits of or under any such Designated Executory Contract (including enforcement for the benefit of Buyer of any and all rights of Sellers against a third party thereto arising out of the breach or cancellation by such third party), and (b) cause Buyer to bear all costs and obligations of or under any such Designated Executory Contract (other than those costs or obligations of or under any such Designated Executory Contract solely attributable to or arising prior to or on the Closing Date). Any assignment to Buyer of any Designated Executory Contract that shall, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, require the Consent of any third party for such assignment as aforesaid shall be made subject to such Consent being obtained.

1.6 Risk of Loss. Until the Closing occurs, any loss of or damage to the Acquired Assets from fire, casualty or any other occurrence shall be the sole responsibility of Sellers; provided that, if the Closing occurs following any such loss or damage and such loss or damage has not been remedied by Sellers, Sellers shall remit, or cause to be remitted, to Buyer any insurance proceeds related to such loss or damage that are received by Sellers. At the Closing, title to the Acquired Assets shall be transferred to Buyer, and Buyer shall thereafter bear all risk of loss associated with the Acquired Assets.

ARTICLE 2
CONSIDERATION

2.1 Consideration. The purchase price (the "Purchase Price") for the sale, assignment and transfer of the Acquired Assets shall be (a) a credit bid in the aggregate amount
of $42,000,000 consisting of a portion of the Pre-Petition Obligations (the “Credit Bid”)\(^1\), plus (b) an amount of cash sufficient for (i) the repayment of all outstanding Obligations (as defined in the DIP Credit Agreement) under the DIP Facility (as defined in the Final DIP Order), (ii) payment of the Cure Costs, and (iii) without duplication, payment of any Carve-Out and any additional amounts payable pursuant to and in accordance with the Wind-Down Budget, plus (c) the assumption of the Assumed Liabilities, including deferred revenue obligations at a cost-to-fulfill which will be mutually agreed upon by Sellers and Buyer prior to the Closing Date.

2.2 Performance Deposit. In accordance with the Bidding Procedures, Buyer is not required to post a cash deposit.

ARTICLE 3
CLOSING AND DELIVERIES

3.1 Closing. The consummation of the transactions contemplated hereby (the “Closing”) shall take place at the offices of Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110 at 10:00 a.m. no later than the second Business Day following the satisfaction or waiver by the appropriate party of all the conditions contained in Article 7 hereof, or on such other date and/or at such other place and time as may be mutually agreed to by the parties hereto (the “Closing Date”).

3.2 Sellers’ Deliveries. The sale, transfer, assignment and delivery by Sellers of the Acquired Assets to Buyer, as herein provided, shall be effected on the Closing Date by bills of sale, endorsements, assignments and other instruments of transfer and conveyance, as shall be consistent with the terms of this Agreement and reasonably satisfactory in form and substance to counsel for Buyer, and Sellers shall take all commercially reasonable steps and actions as Buyer may reasonably request or as may otherwise be necessary, to put Buyer in actual possession or control of the Acquired Assets.

3.3 Buyer’s Deliveries. At the Closing, Buyer shall (i) execute and deliver to Sellers an instrument of assumption of liabilities with respect to the Assumed Liabilities reasonably satisfactory in form and substance to counsel for Sellers, and (ii) repay, on behalf of Sellers all outstanding Obligations under the DIP Facility and (iii) pay Cure Costs to Sellers or directly to any counterparty of any Designated Executory Contract, as directed by Sellers.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Sellers. Sellers jointly and severally represent and warrant to Buyer that each of the statements contained in this Section 4.1 is true and correct as of the date hereof. Except for the representations and warranties expressly set forth in this Section 4.1 or elsewhere in this Agreement or any document or certificate delivered in accordance herewith or otherwise at the Closing, no Seller makes any representation or warranty (express or implied).

\(^{1}\) Buyer specifically reserves the right to increase the amount of the Credit Bid.

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(a) **Organization.** Each Seller is a corporation or limited liability company, as the case may be, duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation, formation or organization. Each Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the Business is located or in which the operation of the Business makes such licensing or qualification necessary, except where the failure to be so registered or qualified would not have a Material Adverse Effect or is a result of the commencement of the Bankruptcy Cases. Subject to any necessary authority from the Bankruptcy Court, each Seller has all requisite corporate or limited liability power and authority to own its properties and assets used in the Business, to conduct the Business as presently conducted and to consummate the transactions contemplated hereby and by the Ancillary Agreements to which it is a party.

(b) **Authorization and Validity.** Each Seller has all requisite corporate or limited liability company power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party and, subject to (i) the Bankruptcy Court’s entry of the Sale Order and (ii) the receipt of the Consents set forth on Schedule 4.1(d), to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements to which it is a party and its performance of its obligations hereunder and thereunder have been duly authorized by all necessary corporate or limited liability company action by each Seller, and no other corporate or limited liability company action on the part of such Seller is necessary to authorize such execution, delivery and performance. This Agreement and the Ancillary Agreements have been or will be duly executed by each Seller party thereto and, subject to the Bankruptcy Court’s entry of the Sale Order, constitute, or will when executed constitute, its valid and binding obligations, enforceable against it in accordance with their terms.

(c) **No Conflict or Violation.** Subject to the receipt of the Consents set forth on Schedule 4.1(d) and the Bankruptcy Court’s entry of the Sale Order, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which it is a party (i) do not and will not violate or conflict with any provision of the certificate of incorporation, by-laws, certificate of formation, operating agreement, limited liability company agreement or similar organizational documents of such Seller, (ii) do not and will not materially violate any Law, or any order, judgment, writ or decree of any court or Government ("Order") applicable to such Seller, the Business or any Acquired Asset, (iii) do not and will not materially violate or result in a material breach of or constitute (with due notice or lapse of time or both) a material default under any Designated Executory Contract, and (iv) do not and will not result in the imposition of a Lien, other than a Permitted Lien, upon or with respect to any of the Acquired Assets.

(d) **Consents.** Schedule 4.1(d) sets forth a true and complete list of each material Consent (other than the Bankruptcy Court’s entry of the Sale Order) and each material declaration to or filing or registration with any Government (other than those required to be made to or filed with the Bankruptcy Court), that is required in connection with or by virtue of the execution and delivery of this Agreement by Sellers or the performance by Sellers of their obligations hereunder.

(e) **Compliance with Law.** Except as set forth on Schedule 4.1(e), Sellers are and have been in compliance in all material respects with all Laws applicable to the Business.
or any of the Acquired Assets, and no Seller is in default with respect to any Order applicable to the Business or any of the Acquired Assets other than defaults the consequences of which would not reasonably be expected to have a Material Adverse Effect.

(f) **Litigation.** As of the date of this Agreement, and except as set forth on Schedule 4.1(f), there are no Claims, actions, suits, proceedings or investigations pending or, to Sellers’ Knowledge, threatened, before any court, arbitrator or Government brought by or against or otherwise involving Sellers, the Business, or the Acquired Assets.

(g) **Employment Matters.** There are no collective bargaining agreements to which Sellers are a party relating to any Business Employee. There is no pending or, to Sellers’ Knowledge, threatened strike, slowdown, picketing, work stoppage, and there is no pending application for certification of a collective bargaining agent involving Sellers and any Business Employee. There are no persons employed by Sellers (whether full-time or part-time) as of the Closing Date other than the Business Employees. **Schedule 4.1(g)** is a complete list of all Business Employees as of the Closing Date, specifying their position, status and date of hire (such list to be updated prior to the Closing Date to be true, complete and correct as of the Closing Date). Except as set forth on **Schedule 4.1(g)**, none of the Business Employees is subject to any sort of employment agreement, whether written or oral.

(h) **Title and Ownership.** Each Seller has good and marketable title to, or right by Contract to use, the Acquired Assets to be sold by it. Subject to the entry of the Sale Order, at the Closing, each Seller will have the right to transfer such Acquired Assets to Buyer free and clear of all Liens, other than the Permitted Liens.

(i) **Sellers’ Intellectual Property.**

(i) **Schedule 1.1(h)** sets forth a true and complete list of all U.S. and foreign registered Intellectual Property that is owned by Sellers as of the Closing Date and which is used in the conduct of the Business or otherwise in connection with the Acquired Assets as well as all applications and renewals therefor. Except as set forth on **Schedule 1.1(h)**, Sellers are the sole owners of all of the applications and registrations set forth on **Schedule 1.1(h)**, and all such applications and registrations are in effect and subsisting.

(ii) Except as disclosed on **Schedule 4.1(i)**, to Sellers’ Knowledge (x) neither the conduct of the Business by Sellers (including the products and services sold or provided by Sellers) or any Intellectual Property owned by Sellers and listed on **Schedule 1.1(h)** infringes or otherwise violates any other Person’s intellectual property rights, and no such claims of infringement or violation are pending or threatened in writing against Sellers, and (y) no Person is infringing or otherwise violating any Intellectual Property owned or licensed by Sellers, and no such claims are pending or threatened in writing against any Person by Sellers.

(iii) The Acquired Assets and any rights provided to Buyer pursuant to this Agreement or any other Ancillary Agreement include all third party intellectual property rights used in the conduct of the Business in the manner in which the Business
was conducted prior to the Closing Date or otherwise used in connection with the Acquired Assets in the way they were used prior to the Closing Date, except to the extent such third party Intellectual Property rights were conveyed to one or more of Sellers through a contract that is not a Designated Executory Contract.

(j) **Environmental Matters.** Except as set forth in Schedule 4.1(i):

(i) the operations of the Business comply in all material respects with all applicable Environmental Laws;

(ii) Sellers have, in respect of the Business, obtained all environmental, health and safety Government permits necessary for its operation, and all such permits are in good standing and Sellers are in compliance with all terms and conditions of such permits;

(iii) none of Sellers are subject to a written and effective order from, or agreement with, or, to Sellers’ Knowledge, subject to any on-going investigation by, any Person (including any prior owner or operator) respecting any Environmental Law;

(iv) Sellers are not, with respect to the Business, subject to any judicial or administrative proceeding, order, judgment, decree or settlement alleging or addressing a violation of or liability under any Environmental Law;

(v) to the Knowledge of Sellers, there is not now, nor has there ever been, on or in any Property:

(A) any treatment, recycling, storage or disposal of any hazardous waste, as that term is defined under 40 CFR Part 261 or any state equivalent, that requires or required a governmental permit pursuant to Section 3005 of RCRA; or

(B) any underground storage tank or surface impoundment or landfill or waste pile;

(vi) to Sellers’ Knowledge, there is not now on or in any Property any polychlorinated biphenyls (PCB) used in pigments, hydraulic oils, electrical transformers or other equipment;

(vii) Sellers have not received any written or, to Sellers’ Knowledge, oral notice or claim to the effect that they are or may be liable to any Person as a result of the Release or threatened Release of a Contaminant;

(viii) to Sellers’ Knowledge, no Environmental Lien has attached to any Property;

(ix) to Sellers’ Knowledge, any asbestos-containing material which is on or part of any Property is in good repair according to the current standards and
practices governing such material, and its presence or condition does not violate any currently applicable Environmental Law; and

(x) Sellers have provided Buyer with correct and complete copies of all environmental and health and safety reports, reviews and audits in the possession or control of any of the Sellers.

(k) Taxes.

(i) All Tax Returns of the Sellers required to be filed with any Government have been filed when due and in accordance with all applicable Laws. All such Tax Returns are true, correct and complete in all respects and have been prepared in material compliance with all applicable Laws. Sellers have timely paid or caused to be paid all Taxes that are due and owing by it, whether or not shown as due on such Tax Returns. There are no Taxes relating to the Business or the Acquired Assets that are unpaid and that, but for the terms of this Agreement and the entry of the Sale Order by the Bankruptcy Court, would reasonably be expected to become a liability of Buyer after the Closing or a Lien on the Acquired Assets.

(ii) (A) To Sellers’ Knowledge, there are no proceedings, investigations, audits or claims relating to Taxes related to the Acquired Assets or the Business now pending against, (B) no written notice of such a proceeding has been received by the Sellers and (C) to Sellers’ Knowledge, there are no matters under discussion, audit or appeal with any Government relating to Taxes, which would reasonably be expected to result in a Lien on the Acquired Assets.

(iii) There are no outstanding written requests, agreements, consents or waivers issued to any Seller to extend the statute of limitations period applicable to any Tax claim or assessment of any Taxes or deficiencies related to the Sellers, the Acquired Assets or the Business.

(iv) Sellers are not (A) to Sellers’ Knowledge, liable with respect to Taxes of any other Person as a transferee or successor, by contract or otherwise, or (B) a party to or bound by any written Tax sharing agreement, Tax indemnity obligation or similar agreement, arrangement or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other agreement relating to Taxes with any Government).

(v) Except as set forth on Schedule 4.1(k), no written claim has been issued to Sellers by any Government in a jurisdiction where the Sellers do not file Tax Returns that the Sellers are or may be subject to taxation by that jurisdiction.

(l) Brokers. Except for SSG Capital Advisors, LLC ("SSG"), Sellers have not engaged any broker, finder or similar agent with respect to the transactions contemplated by this Agreement, and Sellers are not under any obligation to pay any broker’s fee, finder’s fee or commission other than to SSG in connection with the transactions contemplated by this Agreement.
(m) Financial Statements. Schedule 4.1(m) contains true and complete copies of (a) the audited consolidated balance sheet of Sellers as of October 31, 2008 and the related audited consolidated statement of operations and cash flows for the year ended October 31, 2008 (collectively, the "Audited Financial Statements"), (b) the draft audited consolidated balance sheet of Sellers as of October 31, 2009 and the related draft audited consolidated statement of operations and cash flows for the years ended October 31, 2009 (collectively, the "Draft Financial Statements"), and (c) the unaudited consolidated statement of operations and cash flows for the period then ended (collectively, the "Unaudited Financial Statements"). The Audited Financial Statements were prepared in accordance with GAAP consistently applied and maintained throughout the period indicated (except as otherwise set forth therein) and in accordance with and consistent with Sellers' books and records, and fairly present in all material respects the financial position, results of operations and cash flows of Sellers as of the dates thereof and the periods covered thereby. The Draft Financial Statements were prepared in accordance with GAAP consistently applied and maintained throughout the period indicated (except for the omission of footnotes, subject to audit adjustments and as otherwise set forth therein) and in accordance with and consistent with Sellers' books and records, and fairly present in all material respects the financial position, results of operations and cash flows of Sellers as of the dates thereof and the periods covered thereby. The Unaudited Financial Statements were prepared in accordance with GAAP (subject to normal interim adjustments and reclassifications) consistently applied and maintained throughout the periods indicated, and in accordance with and consistent with Sellers' books and records, and fairly present in all material respects the financial position, results of operations and cash flows of Sellers as of the date thereof and for the period covered thereby.

(n) Absence of Certain Changes. Since July 31, 2010, (a) Sellers have conducted the Business in the ordinary course of business; (b) no event or circumstance has occurred that could reasonably have a Material Adverse Effect and (c) no Lien has been placed upon any of the Acquired Assets, other than Permitted Liens.

4.2 Representations and Warranties of Buyer. Buyer represents and warrants to Sellers that each of the statements contained in this Section 4.2 is true and correct as of the date hereof. Except for the representations and warranties expressly set forth in this Section 4.2 or elsewhere in this Agreement or any document or certificate delivered in accordance herewith or otherwise at the Closing, Buyer does not make any representation or warranty (express or implied).

(a) Organization. Buyer is a national association, validly existing and in good standing under the Laws of the jurisdiction of its formation, and has all requisite power and authority to own its properties and assets and to conduct its businesses as now conducted.

(b) Qualification to do Business. Buyer is duly qualified to do business as a foreign entity and is in good standing in every jurisdiction in which the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary.
(c) **Authorization and Validity.** Buyer has all requisite power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements to which it is a party and the performance of Buyer's obligations hereunder and thereunder have been duly authorized by all necessary action by Buyer, and no other organizational action on the part of Buyer is necessary to authorize such execution, delivery and performance. This Agreement and Ancillary Agreements to which Buyer is a party have been or will be duly executed by Buyer and, subject to the Bankruptcy Court's entry of the Sale Order, constitute, or will when executed constitute, its valid and binding obligations, enforceable against it in accordance with their terms.

(d) **No Conflict or Violation.** The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which it is a party do not and will not violate or conflict with any provision of the certificate of incorporation or by-laws (or equivalent documents) of Buyer and do not and will not violate any provision of Law, or any Order applicable to Buyer.

(e) **Consents.** The execution, delivery and performance of this Agreement and the Ancillary Agreements to which Buyer is a party do not and will not require any Consent or filing with any Government or any other Person except (i) as may be required to be obtained by Buyer after the Closing in order to own or operate any of the Acquired Assets; (ii) for entry of the Sale Order by the Bankruptcy Court; and (iii) for such Consents and filings, of which the failure to obtain or make would not, individually or in the aggregate, have a Material Adverse Effect on the ability of Buyer to consummate the transactions contemplated hereby.

(f) **Adequate Assurances Regarding Designated Executory Contracts.** Buyer is capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Designated Executory Contracts.

(g) **Financial Ability.** Buyer has the financial capability to consummate the transactions contemplated hereby, and Buyer understands that Buyer's obligations hereunder are not in any way contingent or otherwise subject to (a) the consummation of any financing arrangements or obtaining any financing or (b) the availability of any financing to Buyer or any of its Affiliates.

(h) **Litigation.** There is no action, suit, investigation or proceeding pending against, or to the knowledge of Buyer, threatened, before any court or arbitrator or any Government brought by or against or otherwise involving Buyer or its Related Persons that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

(i) **Brokers.** There is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission from Sellers upon consummation of the transactions contemplated by this Agreement.
(j) **Investigation by Buyer.** Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Acquired Assets as contemplated hereunder. Buyer has conducted its own independent review and analysis of the Acquired Assets and the Assumed Liabilities and the business, operations, technology, assets, liabilities, financial condition and prospects of the Business as formerly carried on by Sellers and acknowledges that Sellers have provided Buyer with access to the personnel, properties, premises and records of the Business for this purpose. Buyer has conducted its own independent review of all Orders of, and all motions, pleadings, and other submissions to, the Bankruptcy Court in connection with Bankruptcy Cases. In entering into this Agreement, Buyer has relied solely upon its own investigation and analysis, and Buyer acknowledges that none of Sellers or any of their Affiliates or their respective Related Persons makes or has made (and Buyer has not relied upon) any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Buyer or its Affiliates or any of their respective Related Persons, except for the representations and warranties contained in Section 4.1 of this Agreement or in any document, instrument, or certificate executed or delivered by Sellers pursuant to or in connection herewith or in connection with the transactions contemplated hereby (which are subject to the limitations and restrictions contained in this Agreement or such document, instrument or certificate).

(k) **Worker Adjustment and Retraining Notification Act.** Buyer has no intention to, at any time prior to ninety (90) days after the Closing Date, effectuate a “plant closing” or “mass layoff” (as those terms are defined in the Worker Adjustment and Retraining Notification Act or any similar state or local law) with respect to the Business.

4.3 **No Survival of Representations and Warranties.** None of the representations or warranties of the parties hereto set forth in this Agreement or in any certificate delivered pursuant to Section 7.1(a), Section 7.1(b), Section 7.2(a) or Section 7.2(b) shall survive the Closing.

**ARTICLE 5**

**COVENANTS AND OTHER AGREEMENTS.**

5.1 **Covenants of Sellers.** Sellers covenant as follows; provided that, in the event an Alternate Bidder is selected, these covenants will terminate on the date when the Bankruptcy Court approves the selection of such Alternate Bidder, unless at the Auction Buyer is deemed to be the Back-Up Bidder (as defined in the Bidding Procedures), in which case these covenants will terminate on the earlier of (i) the consummation of the Alternative Transaction and (ii) the date that is thirty (30) days after the conclusion of the Auction:

(a) **Conduct of Business.** Except as otherwise contemplated by this Agreement, other than those filings and proceedings before the Bankruptcy Court and the incurrence of expenses required thereunder, each Seller covenants and agrees that from the date hereof to the Closing Date, each Seller shall cause the Business to be conducted in the ordinary course of business. Except as provided in this Agreement, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned, each Seller shall:
(i) Other than in the ordinary course of business or as required pursuant to any Seller Benefit Plan, agreement or other arrangement existing as of the date hereof or as may be required by applicable Law, not (A) adopt any new Seller Benefit Plan or amend any existing Seller Benefit Plan in any material respect, except for changes as may be required by applicable Law or (B) increase any compensation or enter into or amend any employment, severance, termination or similar agreement with any former, present or future employees of the Business;

(ii) not sell or otherwise dispose of any of the Acquired Assets, or grant or suffer any Lien on any of the Acquired Assets, except for Permitted Liens or make any agreement or commitment to do so, other than in the ordinary course of business or as contemplated by the Bidding Procedures;

(iii) not acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any equity interest in or a portion of the assets of, or by any other manner acquire any business or any Person or division thereof;

(iv) not, directly or indirectly, engage in any transaction with, or enter into any contract with, any director, officer, stockholder or Affiliate of the Sellers, other than transactions associated with the Key Employee Incentive Plan;

(v) not (a) materially amend, modify or otherwise change the non-economic terms of any existing material contract or (b) amend modify or otherwise change the terms of or terminate any existing contract in a manner that changes the amount owed by or payable to Sellers in an amount in excess of $100,000;

(vi) not change in any respect any of its methods or procedures relating to accounting, other than such changes required by GAAP;

(vii) not, other than in the ordinary course of business, bring, settle, compromise or waive any claim or legal right included in the Acquired Assets materially affecting the validity of or value of the Acquired Assets; or

(viii) not agree or commit to do any of the foregoing.

(b) Commercially Reasonable Efforts.

(i) Between the date hereof and the Closing Date, each Seller shall use commercially reasonable efforts to (A) obtain all necessary Consents, waivers, authorizations and approvals of all Governments, and of all other Persons required to be obtained by such Seller in connection with the execution, delivery and performance by such Seller of this Agreement and (B) take, or cause to be taken, all action, and do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective in an expeditious manner the transactions contemplated hereby, subject to Sections 8.1 and 8.2. Each Seller shall use commercially reasonable efforts, except as may be required by the Bankruptcy Court, to maintain the Acquired Assets substantially in accordance with such Seller’s current practices and procedures.
(ii) Prior to the Closing or the earlier termination of this Agreement, each Seller shall observe and comply in all material respects with the Bidding Procedures as approved by the Bankruptcy Court.

(c) **Buyer’s Access to Personnel, Properties and Records; Confidentiality.** Between the date hereof and the Closing Date, each Seller shall afford to Buyer, and to the accountants, counsel, financial advisors and other authorized representatives of Buyer, reasonable access during normal business hours to all books and records of Sellers relating to the Acquired Assets and the Assumed Liabilities. Upon reasonable prior notice and in addition to the foregoing, each Seller shall afford Buyer reasonable access during such period, taking into account Seller’s resources and other commitments, during normal business hours, to the Business Employees in order to permit Buyer to talk with or otherwise provide information to such Business Employees as Buyer deems reasonably appropriate to assure their employment by Buyer after the Closing Date (provided, however, that Buyer shall use reasonable efforts to prevent any such contacts from unreasonably interfering with the operations of the Business and such Business Employees’ duties with Sellers). The rights of access contained in this Section 5.1(c) are granted subject to, and on, the following terms and conditions: (A) any such investigation will be conducted in a reasonable manner; (B) Buyer shall not have access to personnel records of Sellers relating to individual medical histories, the disclosure of which, in Sellers’ good faith opinion, could subject Sellers or any of their Affiliates to material risk of liability; and (C) during the period from the date hereof to the Closing Date, all information provided to Buyer or its agents or representatives by or on behalf of Sellers or their agents or representatives (whether pursuant to this Section 5.1(c) or otherwise) will be governed and protected by Section 11.13.1 of the Credit Agreement; provided that information provided to Capstone Advisory Group, LLC (“Capstone”) shall be governed by the Confidentiality Agreement dated September 7, 2010 by and among Sellers and Capstone and the information provided to any other agent of Buyer that has executed a confidentiality agreement with any of Sellers shall be governed by such confidentiality agreement (such confidentiality agreements, together with Section 11.13.1 of the Credit Agreement, shall be referred to herein as the “Confidentiality Agreements”).

5.2 **Covenants of Buyer.** Buyer covenants as follows; provided that, in the event an Alternate Bidder is selected, these covenants will terminate on the date when the Bankruptcy Court approves the selection of such Alternate Bidder, unless at the Auction Buyer is deemed to be the Back-Up Bidder (as defined in the Bidding Procedures), in which case these covenants will terminate on the earlier of (i) the consummation of the Alternative Transaction and (ii) the date that is thirty (30) days after the conclusion of the Auction:

(a) **Commercially Reasonable Efforts.** Between the date hereof and the Closing Date, Buyer shall use commercially reasonable efforts to (i) obtain all Consents and approvals of all Governments, and all other Persons, required to be obtained by Buyer to effect the transactions contemplated by this Agreement, and (ii) take, or cause to be taken, all action, and do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective in an expeditious manner the transactions contemplated hereby, subject to Sections 8.1 and 8.2.
(b) **Adequate Assurances Regarding Designated Contracts and Required Orders.** With respect to each Designated Executory Contract identified on Schedule 1.1(e), Buyer shall, not fewer than (10) Business Days after the execution of this Agreement, provide adequate assurance of the future performance of such Designated Executory Contract. To the extent Buyer adds any contracts to the list of Designated Executory Contracts pursuant to Section 1.1(e) and Section 5.2(e), with respect to each such added Designated Executory Contract, Buyer shall, not fewer than five (5) Business Days prior to the Auction (or, if there is no Auction, seven (7) Business Days prior to the Sale Hearing), provide adequate assurance of the future performance of such Designated Executory Contract. Between the date hereof and the Closing Date, Buyer agrees that it will use commercially reasonable efforts to take all actions as are reasonably requested by Sellers to assist in obtaining the Bankruptcy Court's entry of the Sale Order and approval of the assignment and assumption of the Designated Executory Contracts, including furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court (in each case, subject to reasonable confidentiality protections) and making Buyer's representatives available to testify before the Bankruptcy Court.

(c) **Cure of Defaults.** Buyer shall, at or prior to the Closing, cure any and all defaults under each Designated Executory Contract, which defaults are required to be cured under the Bankruptcy Code, so that such Designated Executory Contract may be assumed by Sellers and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code.

(d) **Sellers' Access to Records.** Buyer shall permit Sellers and their respective counsel, tax, financial and other advisors as may be retained from time to time, Affiliates and successors and assigns (collectively, the “Seller Parties”), reasonable access during normal business hours, upon reasonable prior notice and without any charge for entry or access to (i) the Records transferred to Buyer pursuant to Section 1.1(o) of this Agreement, following the Closing Date and until the six-year anniversary of the date of this Agreement and (ii) the continuing employees of the Business, for any purpose related to the administration, sale, operation, wind-down, liquidation or reorganization of the assets, liabilities and bankruptcy estates of Sellers, following the Closing Date and until the two-year anniversary of the date of this Agreement. The access referenced in the preceding sentence shall include the right of the Seller Parties to copy and use such Records as they request, provided that the Seller Parties shall reimburse Buyer for its reasonable out-of-pocket expenses related thereto. In the event Buyer wishes to destroy or remove such Records to another location, Buyer shall provide Sellers with reasonable notice of such intent and a reasonable opportunity to copy such Records at Sellers’ sole expense. The rights of access provided to the Seller Parties in the preceding sentences in this Section 5.2(d) shall be exercised by the Seller Parties in a manner that does not unreasonably interfere with the business or operations of Buyer.

(e) **List of Designated Executory Contracts.** Not fewer than five (5) Business Days prior to the Auction or, if there is no Auction, seven (7) Business Days prior to the Sale Hearing, Buyer shall deliver to Sellers a final list, with any changes to the list attached hereto as Schedule 1.1(e), of the Designated Executory Contracts to be acquired by Buyer in connection with the Closing, pending approval of such list by the Bankruptcy Court.
5.3 Offer of Employment.

(a) As of the Closing Date, Buyer shall offer employment, conditioned on Closing, to all of the employees of the Business who are then actively working on matters of the Business (the “Business Employees”) on terms including (i) base salary as of the date of hire not less than the base salary in effect as of the day immediately preceding the Closing Date and (ii) medical and dental plans and a vacation policy, substantially similar to those afforded to the Business Employees immediately prior to the Closing Date. Each Business Employee who accepts Buyer’s employment offer and becomes an employee of Buyer shall be a “Transferred Employee.” Buyer shall continue to employ the Transferred Employees for a period of at least 90 days after the Closing; provided, however, that nothing contained herein shall be construed to limit or restrict Buyer from terminating the employment of a Transferred Employee “for cause”. Within the 60-day period beginning on the Closing Date, Buyer will offer each eligible Transferred Employee participation in a plan intended to be qualified under Section 401(k) of the Code. Notwithstanding anything contained in this Agreement to the contrary, (A) the employment of the Transferred Employees by Buyer shall be on substantially the same terms, conditions and policies of employment (including those policies regarding modifications of the terms and conditions of employment) offered by Sellers immediately prior to the Closing Date, and (B) nothing in this Agreement shall limit the ability of Buyer and its Affiliates from revising or terminating any employee benefit plan, program or policy from time to time; provided, however, that Buyer will not decrease the base or hourly salary, as applicable, payable to any Transferred Employee at any time during the 90 day period following the Closing.

(b) Sellers shall retain all liability, responsibility and obligation on and after the Closing Date with respect to each Seller Benefit Plan that Buyer does not designate as a Designated Executory Contract pursuant to Section 1.4(a) and for any workers compensation claims that relate to events occurring on or prior to the Closing Date. Buyer acknowledges, however, that Sellers expect to terminate the Seller Benefit Plans immediately or shortly after the Closing Date unless Buyer has designated such Seller Benefit Plans as Designated Executory Contracts prior to the Closing Date, and that by operation of law Buyer may be required, in connection with the termination of any Seller Benefit Plan which is a welfare plan, to offer certain persons the opportunity to purchase COBRA group health plan continuation coverage through Buyer’s group health plans, in accordance with Section 5.3(f) below.

(c) Prior to the Closing Date, Sellers shall take all such action as may be necessary, if any, to cause the Transferred Employees to become (i) ineligible to contribute to the Seller Benefit Plan which is intended to be qualified under Section 401(k) of the Code (“Seller 401(k) Plan”) in respect of compensation earned on or after the Closing Date (unless Buyer has designated the Seller 401(k) Plan as a Designated Executory Contract), and (ii) fully vested, as of the Closing Date, in their accrued benefits under the Seller 401(k) Plan.

(d) All wages and commissions, all employee payroll deductions, employer matching, profit sharing, retirement or other similar contributions to the Seller Benefit Plans, and all employee withholding taxes relating to services provided by the Transferred Employees through the date immediately preceding the Closing Date shall be paid or contributed prior to the Closing Date.
(e) No provision of this Section 5.3 shall create any third party beneficiary rights in any Transferred Employee or any other employee or former employee (including any beneficiary or dependent of any Transferred Employee or other employee or former employee) of Sellers in respect of continued employment (or resumed employment) or any other matter.

(f) Sellers shall have all responsibility and obligation to make COBRA continuation coverage available to all persons who are “M&A qualified beneficiaries” within the meaning of Treasury Regulation Section 54.4980B-9 Q&A 4 with respect to the transactions contemplated by this Agreement; provided, however, that in the event Sellers cease to maintain a group health plan following the Closing Date, Buyer shall have sole responsibility to provide COBRA continuation coverage benefits under Buyer’s group health plans to all such M&A qualified beneficiaries.

(g) Sellers shall cooperate with Buyer so as to allow Buyer to (i) arrange and conduct for Business Employees prior to the Closing Date an open enrollment period for Buyer’s benefit plans and employee orientation sessions (with such sessions to be held at times reasonably agreed to by Buyer and Sellers), and (ii) meet with the Business Employees (either individually or in groups) during breaks, outside of scheduled work hours or as otherwise agreed to by Buyer and Sellers.

(h) Buyer shall credit, as of the end of the Closing Date, all Transferred Employees with Buyer with all of their time of service with the Business pursuant to Buyer’s medical and other welfare benefit plans in computing the benefits available to such employees under such welfare benefit plans, and, as of the Closing Date, shall allow such employees to carry over all of their vacation time accrued and not taken (or cashed out) during their employment with the Business. With respect to each medical plan of Buyer in which Transferred Employees become participants as of the Closing Date, Buyer shall cause there to be waived any pre-existing condition exclusions, except to the extent such pre-existing condition exclusions actually applied as of the Closing Date to limit, restrict or deny coverage to a Transferred Employee under the Seller Benefit Plans which provided medical coverage to the Transferred Employee on the Closing Date.

5.4 Covenants of Buyer and Sellers. Buyer and Sellers agree to the following; provided that, in the event an Alternate Bidder is selected, these covenants will terminate on the date when the Bankruptcy Court approves the selection of such Alternate Bidder, unless at the Auction Buyer is deemed to be the Back-Up Bidder (as defined in the Bidding Procedures), in which case these covenants will terminate on the earlier of (i) the consummation of the Alternative Transaction and (ii) the date that is thirty (30) days after the conclusion of the Auction:

(a) Certain Filings. Sellers and Buyer shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Government is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions, causing such actions to be taken, making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.
5.5 **Survival of Covenants.** Except for the covenants and agreements expressly by their terms to be performed or which survive after the Closing Date, none of the respective covenants and agreements of Sellers and Buyer herein, or in any other document delivered prior to or at the Closing, will survive the Closing.

**ARTICLE 6**  
**TAXES.**

6.1 **Payment of Taxes.** Subject to Section 6.2, Sellers shall retain liability for and shall pay all Taxes with respect to the Business or Acquired Assets that are attributable to or allocable to any Pre-Closing Tax Period. Buyer shall pay all Taxes with respect to the Business or the Acquired Assets that are attributable to or allocable to any Post-Closing Tax Period and shall be entitled to any refund of Taxes that are attributable or allocable to any Post-Closing Tax Period. Real and personal property Taxes set forth on Schedule 6.3 shall be prorated and apportioned between Buyer and Sellers in accordance with Section 6.3 herein.

6.2 **Transfer Taxes Related to Purchase of Acquired Assets.** All federal, foreign, state and local sales, use, transfer, stamp, excise, value-added or other similar Taxes, recording and filing fees (collectively, "Transfer Taxes"), not precluded by the Sale Order under Section 1146(a) of the Bankruptcy Code, that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets, shall be paid by Buyer. Buyer and Sellers agree to cooperate to determine the amount of Transfer Taxes payable in connection with the transactions contemplated under this Agreement. Sellers agree to assist Buyer reasonably in the preparation and filing of any and all required returns for or with respect to such Transfer Taxes with any and all appropriate taxing authorities.

6.3 **Proration and Payment of Real and Personal Property Taxes.** Taxes for any Straddle Period, including the items listed on Schedule 6.3 hereto relating to real and personal property taxes and assessments on the Acquired Assets shall be prorated between Buyer and Sellers as of the close of business on the Closing Date. For the purposes of this Section 6.3, (a) in the case of any Taxes other than Taxes based upon or related to income or receipts, the portion thereof that is attributable or allocable to Sellers shall be the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the entire taxable period, and (b) in the case of any Tax based upon or related to income or receipts, the portion thereof that is attributable or allocable to Sellers shall be deemed equal to the amount which would be payable by Sellers if the relevant taxable period ended on the Closing Date.

6.4 **Cooperation on Tax Matters.**

(a) Buyer and Sellers agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Acquired Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest,
for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.

(b) Buyer agrees to retain possession, at its own expense, of all accounting, business, financial and Tax records and information relating to the Acquired Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to Buyer hereunder for a period of at least six (6) years from the Closing Date, and will give Sellers notice and an opportunity to retain at Sellers’ cost any such records in the event that Buyer determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, Buyer agrees that it will provide access to Sellers and Sellers’ attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information contained in the Records relating to the Acquired Assets or the Assumed Liabilities Seller may reasonably deem necessary to (x) properly prepare for, file, prove, answer, prosecute and/or defend any such Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer or (y) administer or complete any cases under Chapter 11 of the Bankruptcy Code of Sellers or the other Seller Parties. Such access shall include, without limitation, access to any computerized information retrieval systems contained in the Records relating to the Acquired Assets or the Assumed Liabilities.

(e) Sellers agrees to retain possession, at their own expense, of all accounting, business, financial and Tax records and information relating to the Excluded Assets or the Excluded Liabilities that are in existence on the Closing Date and retained by Sellers hereunder until Sellers file, and the Bankruptcy Court approves, a motion to destroy such records, and will give Buyer notice and an opportunity to object to the destruction of such records at Buyer’s cost. In addition, from and after the Closing Date and for so long as Sellers retain such records, Sellers agree that they will provide access to Buyer and Buyer’s attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information relating to the Excluded Assets or the Excluded Liabilities Buyer may reasonably deem necessary to properly prepare for, file, prove, answer, prosecute and/or defend any such Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer until the Bankruptcy Court enters a final order approving the destruction of such records. Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Excluded Assets or the Excluded Liabilities.

6.5 Allocation of Purchase Price and Purchase Price Allocation Forms. Prior to the Closing Date, Buyer shall allocate the Purchase Price and the Assumed Liabilities among the Acquired Assets (the “Allocation”) and provide written notice thereof to Sellers by the Closing Date. If Buyer provides written notice of the Allocation to Sellers by the Closing Date, Sellers and Buyer will cooperate in filing with the Internal Revenue Service their respective Forms 8594 as provided for in Section 1060 of the Code on a basis consistent with the Allocation, and the Allocation shall be reflected on any Tax Returns required to be filed as a result of the transactions contemplated hereby. None of Sellers or Buyer shall take any position on any of their respective Tax Returns that is contrary to the Allocation.
ARTICLE 7
CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES.

7.1 Conditions Precedent to Performance by Sellers. The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than the condition contained in Section 7.1(c)(i)) may be waived by Sellers in their sole discretion:

(a) Representations and Warranties of Buyer. All representations and warranties made by Buyer in Section 4.2 shall be accurate on and as of the Closing Date as if again made by Buyer on and as of such date (except for those representations and warranties that expressly relate to a particular date, in which case such representations and warranties shall have been accurate as of such date), provided that all such representations and warranties not qualified as to materiality or Material Adverse Effect shall be accurate in all material respects on and as of the Closing Date, and Sellers shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, to that effect.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date in accordance with the terms of this Agreement.

(c) Consents and Approvals.

(i) The Bankruptcy Court shall have entered the Sale Order, and no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(d) No Violation of Orders. No preliminary or permanent injunction or other Order by any Government that declares this Agreement or any Ancillary Agreement invalid or unenforceable in any respect or enjoins, restrains, prohibits, or prevents the consummation of the transactions contemplated hereby or thereby shall be in effect.

(e) Cure of Defaults. At or prior to the Closing, Buyer shall have cured, or made arrangements to cure promptly, any and all defaults under the Designated Executory Contracts that are required to be cured under the Bankruptcy Code, so that such Designated Executory Contracts may be assumed by Sellers and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code.

(f) Receipt of Documents. Sellers shall have received (i) a copy, certified by the applicable Government, of the certificate of formation or equivalent formation document of Buyer, (ii) a certificate of good standing of Buyer issued as of a recent date by the applicable Government, and (iii) a certificate from an officer or otherwise authorized Person of Buyer certifying the resolutions or similar action taken by the applicable governing Person or body of Buyer authorizing performance under this Agreement and the transactions contemplated hereby.

(g) Receipt of the Allocation. Buyer shall have delivered to Sellers a schedule setting forth the Allocation.
7.2 **Conditions Precedent to the Performance by Buyer.** The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than the condition contained in Section 7.2(c)(i)) may be waived by Buyer in its sole discretion:

(a) **Representations and Warranties of Sellers.** All representations and warranties made by Sellers in Section 4.1 shall be accurate on and as of the Closing Date as if again made by Sellers on and as of such date (except for those representations and warranties that expressly relate to a particular date, in which case such representations and warranties shall have been accurate as of such date), provided that all such representations and warranties not qualified as to materiality or Material Adverse Effect shall be accurate in all material respects on and as of the Closing Date, and Buyer shall have received a certificate, dated the Closing Date and signed by the Chief Executive Officer of Parent, to that effect.

(b) **Performance of the Obligations of Sellers.** Sellers shall have performed in all material respects all obligations required under this Agreement to be performed by them on or before the Closing Date in accordance with the terms of this Agreement.

(c) **Consents and Approvals.**

(i) The Bankruptcy Court shall have entered the Sale Order, and no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(ii) All other Consents required from any Person to permit the consummation of the transactions contemplated by this Agreement, which Consents shall be identified to Sellers by Buyer in writing, after consultation with Sellers, within the four weeks following the date hereof, shall have been obtained and be in full force and effect.

(iii) The Majority Lenders (as defined in the Credit Agreement) shall have consented to the transactions contemplated by this Agreement.

(d) **No Violation of Orders.** No preliminary or permanent injunction or other Order by any Government that declares this Agreement or any of the agreements to be entered into in connection with this Agreement invalid or unenforceable in any respect or enjoins, restrains, prohibits, or prevents the consummation of the transactions contemplated hereby or thereby shall be in effect.

(e) **No Litigation.** There shall not be pending or threatened any litigation that could reasonably be expected to result in any of the effects set forth in Section 7.1(d) or Section 7.2(d).

(f) **Releases.** The Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Parties (each, as defined in the Interim DIP Order) and each of their respective agents, officers, directors, employees, attorneys, professionals, successors, and assigns shall have been released and discharged from all claims and causes of action arising under the Bankruptcy Code, any other Law or otherwise, arising out of, relating to or in connection with the parties'
relationship with the Debtors, the Bankruptcy Cases, and the Pre-Petition First Lien Loan Documents (as defined in the Interim DIP Order), all as contemplated in the Interim DIP Order.

(g) **No Material Adverse Effect.** No Material Adverse Effect shall have occurred since the date of this Agreement.

(h) **FIRPTA Certificate.** Each of Sellers shall have executed and delivered to Buyer, or caused to be executed and delivered to Buyer, a certificate in form and substance mutually satisfactory to Sellers and Buyer.

7.3 **Frustration of Closing Conditions.** Sellers may not rely on the failure of any condition set forth in Section 7.1 to be satisfied if such failure was caused by Sellers’ failure to act in good faith or to use its commercially reasonable efforts to consummate the transactions contemplated by this Agreement, as required by and subject to Section 5.1(b). Buyer may not rely on the failure of any condition set forth in Section 7.2 to be satisfied if such failure was caused by Buyer’s failure to act in good faith or to use its commercially reasonable efforts to consummate the transactions contemplated by this Agreement, as required by and subject to Section 5.2(a).

**ARTICLE 8**

**TERMINATION.**

8.1 **Conditions of Termination.** This Agreement may be terminated at any time before the Closing:

(a) By mutual written consent of Sellers and Buyer;

(b) By Sellers, by written notice to Buyer, or by Buyer, by written notice to Sellers, on or after the date that is 90 days after the date hereof (the “**Termination Date**”) if the Closing shall not have occurred on or prior to the Termination Date, subject, however, to extension by the mutual written consent of Sellers and Buyer; **provided, however,** that Sellers shall not have the right to terminate this Agreement under this **Section 8.1(b)** if the failure of the Closing to occur on or prior to the Termination Date is as a result of Sellers’ conduct or if Sellers are then in material breach of this Agreement, and Buyer shall not have the right to terminate this Agreement under this **Section 8.1(b)** if the failure of the Closing to occur on or prior to the Termination Date is as a result of Buyer’s conduct or Buyer is then in material breach of this Agreement;

(c) By Sellers, by written notice to Buyer, or by Buyer, by written notice to Sellers, if any injunction or other Order contemplated by **Section 7.1(d)** and **Section 7.2(d)** shall have become effective; **provided, however,** that a party shall not have the right to terminate this Agreement under this **Section 8.1(c)** if such party is then in material breach of this Agreement;

(d) By Sellers, if Buyer shall have breached or failed to perform in any material respect any of its obligations, covenants or agreements under this Agreement, or if any of the representations and warranties of Buyer set forth in this Agreement shall not be true and correct to the extent set forth in **Section 7.1(a),** and such breach, failure or misrepresentation is not cured to the Sellers’ reasonable satisfaction within 10 days after the Sellers give Buyer
written notice identifying such breach, failure or misrepresentation; provided that Sellers shall not have the right to terminate this Agreement under this Section 8.1(d) if Sellers are then in material breach of this Agreement;

(e) By Buyer, if any of Sellers shall have breached or failed to perform in any material respect any of their respective obligations, covenants or agreements under this Agreement, or if any of the representations and warranties of Sellers set forth in this Agreement shall not be true and correct to the extent set forth in Section 7.2(a), and such breach, failure or misrepresentation is not cured within 10 days after Buyer gives Sellers written notice identifying such breach, failure or misrepresentation; provided that Buyer shall not have the right to terminate this Agreement under this Section 8.1(e) if Buyer is then in material breach of this Agreement;

(f) By Buyer, if prior to the Closing any Bankruptcy Case is converted from a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code without the prior written consent of Buyer; or

(g) By Buyer, by written notice to Sellers, if (i) following entry of the Bidding Procedures order, such order is reversed, vacated or otherwise modified in any respect that is materially adverse to Buyer, (ii) the Bidding Procedures order is stayed as of the date the Auction is scheduled to commence, (iii) the Bidding Procedures order is not a Final Order prior to the date the Auction commences, or (iv) the Sale Order has not been entered in final form within 5 Business Days after the Auction or, if no Auction, after the Sale Hearing or if such Sale Order is subject to a stay or injunction on such date.

(h) Automatically, if Sellers consummate an Alternative Transaction.

8.2 Effect of Termination; Remedies.

(a) In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall become null and void and have no effect (other than Article 8 and Article 10, which shall survive termination), with no liability on the part of Sellers or Buyer, their respective Affiliates or Related Persons, with respect to this Agreement, except for (i) the liability of a party for its own expenses pursuant to Section 10.3; (ii) any liability otherwise provided for in this Section 8.2 (or by the express terms of any other Section of this Agreement that survives such termination) and (iii) any liability relating hereto under any applicable Confidentiality Agreement; provided, however, (y) that, if this Agreement is terminated because of a breach of this Agreement by Sellers or because one or more of the conditions to Buyer’s obligations under this Agreement is not satisfied as a result of Sellers’ failure to comply with its obligations under this Agreement, Buyer’s right to pursue all legal remedies will survive such termination unimpaired; and (z) that, if this Agreement is terminated because of a breach of this Agreement by Buyer or because one or more of the conditions to Sellers’ obligations under this Agreement is not satisfied as a result of Buyer’s failure to comply with its obligations under this Agreement, Sellers’ rights shall be limited in all respects to the termination of this Agreement and Sellers shall be released from their obligation to consummate the transactions contemplated herein as provided in the next paragraph.
IF BUYER FAILS TO COMPLETE THE PURCHASE AS PROVIDED IN THIS AGREEMENT FOR ANY REASON, INCLUDING BY REASON OF ANY DEFAULT OF BUYER, SELLERS SHALL BE RELEASED FROM THEIR OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREIN, WHICH REMEDY SELLERS HEREBY ACKNOWLEDGE AND AGREE IS SELLERS' EXCLUSIVE REMEDY. SELLERS AND THEIR ESTATES WAIVE ALL OTHER RIGHTS AND REMEDIES AGAINST BUYER WHICH SELLERS OR THEIR ESTATES MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, INCLUDING SPECIFIC PERFORMANCE, BY REASON OF BUYER FAILING TO COMPLETE THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING BY REASON OF ANY DEFAULT OR BREACH HEREUNDER BY BUYER.

WITHOUT LIMITING THE FOREGOING, SELLERS ACKNOWLEDGE AND AGREE THAT THEY AND THEIR ESTATES HEREBY WAIVE AND RELINQUISH ANY AND ALL RIGHT TO SPECIFIC PERFORMANCE OF THIS AGREEMENT OR OTHER EQUITABLE REMEDIES AGAINST BUYER HEREUNDER.

ARTICLE 9
BANKRUPTCY MATTERS.

9.1 Bankruptcy Court Approval of Preliminary Order and Sale Order.

(a) Sellers and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of assignment of the Designated Executory Contracts are subject to Bankruptcy Court approval. Sellers and Buyer acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, and (ii) Buyer must provide adequate assurance of future performance under the Designated Executory Contracts.

(b) As promptly as reasonably practicable after the date hereof, Sellers shall file and serve motions with the Bankruptcy Court seeking: (i) an order approving the Bidding Procedures relating to the sale of the Acquired Assets under Sections 363 and 365 of the Bankruptcy Code as set forth on Exhibit A (the "Bidding Procedures") and an order approving the adequacy of notice to creditors and parties in interest for the approval of the transactions contemplated hereby and setting a date for a hearing on the asset sale (the "Sale Hearing") no later than thirty (30) days after the approval of the Bidding Procedures (the "Preliminary Order"); and (ii) an order authorizing Sellers to sell the Acquired Assets to Buyer pursuant to this Agreement and Sections 105, 363 and 365 of the Bankruptcy Code, free and clear of all Liens in or on the Acquired Assets (including any and all "claims and interests" in the Acquired Assets within the meaning of Section 363(f) of the Bankruptcy Code), other than Permitted Liens and otherwise free and clear of claims and liabilities and authorizing Sellers, among other things, to assume and to assign to Buyer the Assumed Liabilities and the Designated Executory Contracts and liabilities thereunder under Section 365 of the Bankruptcy Code, all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order and in accordance with other applicable provisions of the Bankruptcy Code (the "Sale Order").
(c) The Preliminary Order shall be consistent with the Bidding Procedures attached hereto as Exhibit A and otherwise in form and substance reasonably satisfactory to Sellers and Buyer. The Sale Order shall be in form and substance reasonably satisfactory to Sellers and Buyer.

(d) Subject to the Preliminary Order, Sellers shall promptly make any filings, take all actions, and use all reasonable efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the transactions contemplated hereby, subject to Sellers’ obligations to comply with any order of the Bankruptcy Court and other applicable Law.

9.2 Bidding Procedures. Sellers (a) shall conduct the auction process of the Acquired Assets in material accordance with the Bidding Procedures attached hereto as Exhibit A, subject to the approval of the Bankruptcy Court and (b) shall not amend, waive, modify or supplement the Bidding Procedures except as set forth therein without the prior written consent of Buyer.

ARTICLE 10
MISCELLANEOUS.

10.1 Successors and Assigns. Sellers shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of Buyer, and any attempted assignment without such prior written consent shall be void and of no force and effect. Sellers acknowledge that Buyer may assign its rights and obligations hereunder to one or more Persons, which Persons shall be owned by or otherwise an Affiliate of the Buyer and/or the Lenders. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Buyer.

10.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of Laws thereof), except to the extent that the Laws of the State of Delaware are superseded by the Bankruptcy Code. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court, subject to the right of any party to seek withdrawal of the reference with respect to any matter. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, the United States District Court for the State of Delaware or any state courts located in the State of Delaware.

10.3 Expenses. Each of the parties hereto shall pay its own expenses in connection with this Agreement and the Ancillary Agreement and the transactions contemplated hereby and thereby, including any legal and accounting fees, whether or not the transactions contemplated hereby are consummated. Buyer shall pay the cost of all surveys, title insurance policies and title reports requested by Buyer that are not already in the possession of Sellers.
10.4 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.

10.5 Notices. (a) All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given when received and shall be deemed duly given if: (i) served personally on the party to whom notice is to be given at the address specified below for such party; (ii) sent to the party to whom notice is to be given via facsimile transmission to the facsimile number of such party specified below, and telephonic confirmation of receipt is obtained promptly after completion of transmission; (iii) sent to the party to whom notice is to be given at the address specified below for such party by Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iv) mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to Sellers:

Thompson Publishing Group, Inc.
5201 W Kennedy Blvd. Ste 220
Tampa, Florida 33609-1823
Attention: Kevin S. Ooley, Chief Financial Officer
Facsimile: (813) 281-1801

Copy to:

Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02120
Attention: John F. Ventola, Esq.
Facsimile: (617) 248-4000

If to Buyer:

PNC Bank, National Association
1600 Market Street, -F2-F070-11-4
Philadelphia, PA 19103
Attention: Gary Best
Facsimile: (215) 585-8391

Copy to:

Sidley Austin LLP
555 West Fifth Street, Suite 4000
Any party may change its address for the purpose of this Section 10.5 by giving the other party written notice of its new address in the manner set forth above.

10.6 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

10.7 Public Announcements. No party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other party, unless a press release or public announcement is required by Law or Order of the Bankruptcy Court or permitted by the Bidding Procedures, the Preliminary Order or the Sale Order. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing party agrees to give the nondisclosing party prior notice of, and an opportunity to comment on, the proposed disclosure. The parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

10.8 Entire Agreement. This Agreement, all Ancillary Agreements and the Confidentiality Agreements contain the entire understanding between the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All schedules and exhibits hereto are expressly made a part of this Agreement as fully as though completely set forth herein.

10.9 Parties in Interest. Nothing in this Agreement is intended to or shall confer any rights or remedies under or by reason of this Agreement on any Persons other than Sellers and Buyer and their respective successors and permitted assigns. Nothing in this Agreement is intended to or shall relieve or discharge the obligations or liability of any third Persons to Sellers or Buyer. This Agreement is not intended to nor shall give any third Person any right of subrogation or action over or against Sellers or Buyer.

10.10 Bulk Sales Laws. Buyer hereby waives compliance by Sellers and Sellers hereby waive compliance by Buyer, with the provisions of the "bulk sales," "bulk transfer" or similar laws of any state other than any Laws that would exempt any of the transactions contemplated by this Agreement from any Tax liability.
10.11 Headings. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

10.13 Facsimiles and Electronic Transmissions. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission (including a PDF file), shall be treated in all manner and respects 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, one or more of the other parties hereto shall re-execute original forms thereof and deliver them to such first party. No party shall raise the use of a facsimile machine or electronic transmission to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or electronic transmission as a defense to the formation of a contract and each party hereto forever waives any such defense.

10.14 Interpreting Agreement. With reference to this Agreement and each Ancillary Agreement, unless otherwise specified herein, the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "shall" shall be construed to have the same meaning and effect as the word "will." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein, and (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns.

10.15 Waiver of Jury Trial. BUYER AND SELLERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. BUYER AND SELLERS EACH ACKNOWLEDGE THAT THE OTHER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, INTER ALIA, THE PROVISIONS OF THIS SECTION 10.15.

ARTICLE 11
DEFINITIONS.

11.1 Certain Terms Defined. As used in this Agreement, the following terms have the following meanings:

"Affiliates" shall mean, with respect to any Person, any Persons directly or indirectly controlling, controlled by, or under common control with, such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made.
The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Alternate Bidder” has the meaning set forth in the definition herein of Alternative Transaction.

“Alternative Transaction” means any one or more transactions (regardless of the form thereof) involving in the aggregate a sale of all or any substantial portion of the Acquired Assets by Sellers to a purchaser or purchasers other than Buyer (such purchaser or purchasers shall be referred to herein as the “Alternate Bidder”), or the proposal of a plan of reorganization that does not contemplate the sale of the Acquired Assets by Sellers to Buyer in accordance with the terms of this Agreement.

“Ancillary Agreements” means any agreement executed by Sellers and the Buyer in connection with this Agreement.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or other governmental action to close.

“Carve-Out” has the meaning set forth in the Final DIP Order.


“Consent” means any consent, approval, authorization, qualification, waiver or notification of a Government or any other Person.

“Control” has the meaning set forth in the definition herein of Affiliates.

“Contaminant” means any asbestos, asbestos-containing material, mold, waste, pollutant, hazardous or toxic substance or waste, petroleum, petroleum-based substance or waste, special waste, or any constituent of any such substance or waste.

“Credit Agreement” means that certain Amended and Restated Credit Agreement by and among TPG AES Holding Co., Inc, as Borrower; the Financial Institutions identified therein as Lenders; National City Bank, as Administrative Agent and Sole Bookrunner; General Electric Capital Corporation, as Syndication Agent; and National City Bank and General Electric Capital Markets Inc., as Co-Lead Arrangers, dated as of July 6, 2007 and as amended, restated, supplemented or otherwise modified from time to time.

“DIP Credit Agreement” means that certain Debtor In Possession Revolving Credit Agreement, dated as of September [____], 2010, among PNC Bank, National Association, as agent, the lenders identified therein and Parent, TAH, AHC, SIS, TPI, and TPG, as loan parties.
“Employee Records” means all employment and benefit records (in whatever form maintained) in the possession of Buyer or its agents and pertaining to any Person employed by the Business before the Closing Date, or any spouse, dependent or other beneficiary of any such Person.

“Environmental Law” means any requirement under any Law relating to or addressing the environment, natural resources, health or safety, including CERCLA, OSHA and RCRA and any state equivalent thereof.

“Environmental Lien” means a Lien in favor of any Government for (i) any liability under any Environmental Law, or (ii) damages arising from, or costs incurred by such Government in response to, a Release or threatened Release of a Contaminant into the environment.


“ERISA Affiliate” has the meaning set forth in the definition herein of Seller Benefit Plan.

“Final DIP Order” means the Final Order, which authorizes (i) Sellers to obtain post-petition financing, (ii) Sellers to utilize cash collateral, and (iii) the granting of adequate protection, pursuant to Bankruptcy Code sections 105, 361, 362, 363 and 364 and Bankruptcy Rules 2002, 4001, and 9014 Docket No. [__].

“Final Order” means an action taken or order issued by the applicable Government as to which: (i) no request for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Government and the time for filing any such petition or protest is passed; (iii) the Government does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

“GAAP” means generally accepted accounting principles in the United States as in effect as of the date hereof.

“Government” means any federal, state, or municipal court, or other executive, legislative or judicial governmental or quasi-governmental, department, commission, board, bureau, agency or instrumentality, including any division, subdivision, audit group, procuring office or governmental or regulatory authority or any adjudicatory body thereof, of the United States, or any state thereof, or any foreign country.

“Interim DIP Order” means the Interim Order, which authorizes (i) Sellers to obtain post-petition financing, (ii) Sellers to utilize cash collateral, and (iii) the granting of adequate protection, pursuant to Bankruptcy Code sections 105, 361, 362, 363 and 364 and Bankruptcy Rules 2002, 4001, and 9014 Docket No. [__].
“IRS” means the Internal Revenue Service.

“Knowledge of Sellers,” “Sellers’ Knowledge” or any other similar term or knowledge qualification means the actual knowledge of Robert Mate or Kevin Ooley.

“Law” means any U.S. and foreign federal, state or local statutes, laws, rules, regulations, ordinances, codes, policies, rules and principles of common law, and the like, now or hereafter in effect, including any judicial or administrative interpretations thereof, and any judicial or administrative orders, consents, decrees or judgments.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement, right, interest or obligation of any sort whatsoever other than (a) a lessor’s interest in, and any mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement on or affecting a lessor’s interest in, property underlying any leases; and (b) such recorded covenants, restrictions, easements, encroachments or encumbrances that are not created pursuant to mortgages or other financing or security documents, or any other state of facts, that do not materially interfere with the current occupancy or use of an asset.

“Material Adverse Effect” means a state of facts, event, change in or effect that results in a Material Adverse Effect on the value of the Business or the Acquired Assets taken as a whole, but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (A) changes or conditions affecting the industry in which the Business generally operates, which changes or conditions do not disproportionately affect the Business or the Acquired Assets; (B) changes or conditions in economic, regulatory or political conditions generally, which changes or conditions do not disproportionately affect the Business or the Acquired Assets; (D) changes resulting from the filing of, or from any motion, application, pleading or Order filed related to, the Bankruptcy Case; or (E) changes resulting from the execution of this Agreement, the consummation of the transactions contemplated hereby or the announcement by Buyer or Sellers of their intention to consummate the transactions contemplated hereby.

“OSHA” means the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.

“Permitted Liens” means: (a) all Liens set forth on Schedule 4.1(h); (b) Liens for Taxes, assessments and Government or other similar charges that are not yet delinquent, that relate to pre-petition periods or that are being contested in good faith; (c) restrictions under applicable organizational documents; (d) all Liens existing under Designated Executory Contracts; and (e) and Liens granted in connection with post-petition financing and use of cash collateral (which will be released at the Closing).

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

“Post-Closing Tax Period” means, with respect to any Tax, any reporting period beginning after the Closing Date and, in the case of a Straddle Period, including the portion of such taxable period beginning on the day after the Closing Date.
“Pre-Closing Tax Period” means, with respect to any Tax, any reporting period ending on or before the Closing Date and, in the case of a Straddle Period, including the portion of such taxable period ending on and including the Closing Date.

“Pre-Petition Obligations” has the meaning set forth in the Final DIP Order.

“Qualified Rights of Set-Off” means any right of set-off against a claim asserted by a creditor in the Bankruptcy Cases (except to the extent that an amount owed by such creditor to Sellers constitutes an Acquired Asset).


“Related Person” means, with respect to any Person, all past, present and future directors, officers, members, managers, trustees, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers or representatives of any such Person.

“Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, depositing, or disposing into the environment, including the abandonment or discarding of barrels, containers and other receptacles containing any Pollutant.

“Seller Benefit Plan” means any bonus, incentive compensation, stock option, severance pay, medical, life insurance, profit sharing or pension plan, and each other employee benefit plan program or agreement of any kind, including, but not limited to, any employee benefit plan (as defined in Section 3(3) of ERISA) that is sponsored, maintained or contributed to by Sellers or by any trade or business, whether or not incorporated, that together with Sellers would be deemed a “single employer” under Section 414 of the Code (an “ERISA Affiliate”) that is maintained for the benefit of employees of the Business.

“Straddle Period” means any taxable period that includes but does not end on the Closing Date.

“Taxes” means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, which taxes shall include all income taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the Closing Date; and “Tax” shall mean any one of them.

“Tax Return” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).
11.2 **All Terms Cross-Referenced.** Each of the following terms is defined in the section set forth opposite such term:

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<th>Term</th>
<th>Reference</th>
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

SELLERS:

THOMPSON PUBLISHING HOLDING CO., INC.

By: __________________________
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary

TPG AES HOLDING CO., INC.

By: __________________________
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary

THOMPSON PUBLISHING GROUP, INC.

By: __________________________
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary

THOMPSON PUBLISHING DEVELOPMENT LLC

By: __________________________
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary

ALEX ESOLUTIONS, INC.

By: __________________________
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary
AHC MEDIA LLC

By: 
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary

THE PERFORMANCE INSTITUTE, INC.

By: 
Name: Kevin Ooley
Title: CFO, Treasurer and Secretary

BUYER:

PNC BANK, NATIONAL ASSOCIATION, as agent for, and on behalf of, the Lenders (as defined herein)

By: 
Name: 
Title: 
AHC MEDIA LLC

By: ________________________________
Name: ______________________________
Title: ______________________________

THE PERFORMANCE INSTITUTE, INC.

By: ________________________________
Name: ______________________________
Title: ______________________________

BUYER:

PNC BANK, NATIONAL ASSOCIATION, as agent for, and on behalf of, the Leaders (as defined herein)

By: ________________________________
Name: Gary A. Best
Title: Vice President