UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

In re:	:	Chapter 11
	:	
Xcelerated, LLC,[1]	:	Case No. 17-20886-grs
	:	
Debtor.	:	Honorable Gregory R. Schaaf

MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF AN ORDER APPROVING AND AUTHORIZING: (A) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS PURSUANT TO 11 U.S.C. §§ 105(A), 349, 363, 365 AND 1112(b); (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (C) TERMS AND CONDITIONS FOR VOLUNTARY DISMISSAL

Xcelerated, LLC (the "Debtor"), the debtor and debtor in possession in the above-captioned chapter 11 case, by and through its undersigned counsel, hereby moves (the "Motion") under sections 105(a), 349, 363, 365, and 1112(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 1017, 2002, 6005, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and KYEB LBR 2002-1, 6006-1 and 9014-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Kentucky (the "Local Rules") for entry of an order (a) approving and authorizing the sale of substantially all of the Debtor's assets (the "Sale") pursuant to that asset purchase agreement hereinafter described, free and clear of all liens, claims, encumbrances, and other interests; (b) approving the assumption and assignment of certain executory contracts (the "Contracts") and unexpired leases (the "Leases") related thereto; and (c) approving and authorizing terms and conditions as set forth below for voluntary dismissal ("Dismissal") of the Debtor's Chapter 11 Case (defined below), which

[1] The last four digits of the Debtor's taxpayer identification number are (2949). The Debtor's mailing address, solely for purposes of notices and communications, is 2940 Hebron Park Drive, Suite 307, Hebron Kentucky 41048.

provides for a prompt settlement and/or payment of all of Debtor's unsecured creditors. The proposed Sale and Dismissal is in the best interest of all creditors of the bankruptcy estate and is with the consent of all of Debtor's scheduled secured and general unsecured creditors. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

Background

2. On June 21, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Kentucky (the "Court"). The Debtor continues to manage and operate its business as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. The Office of the United States Trustee (the "U.S. Trustee") has filed a *Notice of Inability to Form Official Committee of Unsecured Creditors* [Docket No. 49] in this chapter 11 bankruptcy case (the "Chapter 11 Case"). No trustee or examiner has been appointed in the Chapter 11 Case.

3. The Debtor is a Florida limited liability company with its principle operations in Hebron, Kentucky. The Debtor is a premier source for automotive intelligent marketing. Specifically, the Debtor provides companies with targeted data that drives the marketing of vehicles through mail, e-mail and telephone advertising. This data includes information about up-to-date vehicle ownership and demographics that might identify future vehicle buyers and the types of vehicles those buyers might want to purchase.

4. The Debtor purchased its business from Xcelerated Investments, Inc. n/k/a 621 Holding, Inc. (the "Noteholder") in exchange for $2,472,663.81, which was fully financed by the Noteholder and which accrues interest at a rate of four percent (4%) per annum. The Debtor's obligation to the Noteholder is reflected in the Promissory Note dated October 31, 2015 (the "Note"). The Debtor's obligations to the Noteholder are secured by a lien on substantially all of the Debtor's assets. The Note provides that the Debtor shall satisfy its obligation to the Noteholder in thirty-five (35) equal monthly payments of $70,000 beginning on January 1, 2016 with a maturity date of December 1, 2018. As of the Petition Date, the Debtor had an outstanding obligation to the Noteholder in the amount of $2,472,506.

5. Unfortunately, almost immediately after it was founded, the Debtor had difficulty meeting both its secured obligations to the Noteholders and its regular trade creditors. As a result, the Debtor stopped making monthly payments to the Noteholder in early 2016. Recently, the Debtor's financial situation worsened when it became involved in a contract dispute with M1 Data & Analytics, LLC ("M1") which has turned into litigation pending in both Florida state court and the United States District Court for the District of Delaware.

6. As a consequence of its financial difficulties, prior to the Petition Date, the Debtor made extensive efforts to preserve the going-concern value of its business. Among other things, the Debtor attempted to modify its operations to increase profitability and solicited offers for the sale of its business as a going-concern. As a result of those efforts the Debtor identified a stalking-horse purchaser for substantially all of its assets as a going-concern. On the Petition Date, the Debtor filed the *Motion of the Debtor and Debtor In Possession for Entry of an Order Under 11 U.S.C. §§ 105(a), 363 and 365 (I)(A) Approving and Authorizing the Sale of*

Substantially All of the Debtor's Assets Pursuant to the Successful Bidder's Asset Purchase Agreement Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief [Docket No. 11] (the "Sale Motion"). M1 and Noteholder objected to the Sale Motion [Docket Nos. 27 and 29].

7. Initially, the Debtor was in negotiations with M1, the Noteholder and its proposed stalking-horse purchaser to resolve the objections and tender an agreed proposed sales procedures order to the Court. However, subsequently M1 acquired the Noteholder's secured claim as well as Authenticom, Inc.'s scheduled unsecured claim in the amount of $286,840. M1 has acquired these claims for the purpose of credit-bidding and acquiring substantially all of the Debtor's assets. As a consequence of its acquisition of these claims, M1's lawsuit filed in Florida state court against the Debtor and M1's lawsuit filed with the United States District Court for the District of Delaware against Authenticom, Inc. have been or will be dismissed

8. In order to resolve those objections and maximize the Debtor's value, the Debtor now moves to sell substantially all of its assets free and clear of all liens, claims, encumbrances and other interests pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code to M1 on the terms and conditions contained in the Asset Purchase Agreement between the Debtor and M1 (the "APA"). A copy of the APA between the Debtor and M1 is attached hereto as **Exhibit A**.

9. As part of the proposed transaction, M1 has settled with and/or agreed to pay all other scheduled nonpriority unsecured creditors of the Debtor. These creditors' claims have an aggregate value in the amount of $24,400.18. In each settlement, the unsecured creditor has consented to the dismissal of the Debtor's Chapter 11 Case without further notice. Each such

creditor with which M1 has negotiated or settled has executed an agreement (each a "Creditor Agreement") consenting to the dismissal of Debtor's Chapter 11 Case without further notice. A copy of each Creditor Agreement is attached, collectively, as **Exhibit B**. Three (3) of the Debtor's scheduled nonpriority creditors may be considered utilities: Time-Warner Cable (now, Spectrum) in the amount of $282.50, Duke Energy in the amount of $212.05, and Broadtela in the amount of $692.00. M1 has agreed to pay these claims at Closing.

10. As of the filing of this Motion, the Debtor is current in the payment of its employee obligations and related payroll taxes. The Debtor believes that it will have sufficient cash on hand and from the collection of accounts receivable to pay its payroll, payroll tax and utilities incurred after the Petition Date if this Motion is approved and to pay administrative claims incurred, including fees to the Office of the United States Trustee and allowed fees and expenses of its counsel. Provided, further, that as part of the purchase price for the Sale, M1 agrees to pay all allowed administrative expense claims in the Chapter 11 Case, including payroll, fees and administrative expense claims, to the extent that these claims are not satisfied from the Debtor's cash and accounts receivable.

Proposed Sale of Assets

11. The APA reflects the terms of the proposed sale of the Debtor's assets to M1. Among other things, the APA provides that M1 will credit bid $538,811.38 of its secured claim and satisfy the Debtor's scheduled unsecured claims and satisfy other claims against the Debtor's bankruptcy estate as consideration for its purchase of the Debtor's assets. Further, M1 will assume the Contracts and Leases set forth on Schedule 1.4 of the APA and pay the cure amounts related thereto. The counterparty to each such Contract and Lease has agreed to the

assumption thereof by the Debtor, the assignment thereof to M1, the cure amount due such counterparty and the dismissal of the Debtor's Chapter 11 case without further notice. In addition, M1 will assume Debtor's liabilities relating to vacation, sick leave and paid time off associated with employees of Debtor retained by M1 ("Hired Employees").

12. The Debtor requests entry of an order (the "Sale Order") pursuant to sections 105, 363, 365 and 1112(b) of the Bankruptcy Code authorizing and approving: (a) the Sale of Purchased Assets (defined below) free and clear of all liens, claims, interests, encumbrances and liabilities, except as provided in the APA; and (b) authorizing the Debtor to consummate the Sale and all documents, agreements and contracts to be executed in conjunction therewith.

Assets to be Sold

13. The Debtor seeks to complete a Sale of substantially all of its assets (the "Purchased Assets"), which comprise, among other things, but not limited to, the following: all tangible assets, inventory (including potentially obsolete and non-job specific inventory), supplies, specifications, equipment, work in progress, pending orders, the DataVast application and database, all intellectual property (including all trademarks, service marks, patents, copyrights and trade secrets), software, telephone numbers, URLs, websites, domain names, the Assumed Executory Contracts (as defined below), all deposits under contracts, all formulas, business methodology, goodwill, client contact lists, client records and files, names of the Debtor used in the Debtor's business, including "Xcelerated", "Compliant Auto Resource Solution (C.A.R.S.)", "AutoVINdication", "I Sold It" and "DataVast", and all derivations of such names used by the Debtor, all permits, licenses and prepaid expenses relating to the Purchased Assets, all claims of the Debtor against third parties relating to the Purchased Assets and the operation of the business

thereof (the "Business"), all avoidance claims or causes of action under the Bankruptcy Code or applicable law with respect to the Purchased Assets, all cash and accounts receivable of the Debtor existing as of the Closing Date (as defined in the APA) except such amounts therefrom as the Debtor will need to pay its final payroll and accrued and unpaid payroll taxes and related payroll obligations, and administrative expenses incurred in the Debtor's Chapter 11 Case, and all other assets or business "know how" used in the operation of the Business, wherever located, and all goodwill associated with the Debtor's Business and the Purchased Assets.

14. The Excluded Assets include, without limitation:[2]

- any of the right, title, or interest of the Debtor in or to the Debtor's cash, bank accounts and accounts receivable, necessary to pay the Debtor's final payroll and accrued and unpaid payroll taxes and related payroll obligation, and administrative expenses incurred in the Chapter 11 Case;
- The Debtor's minute book, membership interest records, company seal and any other records of the Debtor relating to its limited liability company organization;
- All books, records, files, and papers (whether in hard copy or computer format) that are not used in, or that do not relate to or affect, the Business; and
- Any insurance policies to which the Debtor is a party.

15. Except as otherwise provided in the APA, all of the Debtor's rights, title and interest in all of the Purchased Assets shall be sold free and clear of any liens, security interests, claims, charges, encumbrances or interests in accordance with section 363 of the Bankruptcy Code.

[2] Capitalized terms used in this list and not otherwise defined shall have the meanings given to them in the APA.

Assumption and Assignment of Assumed Contracts and Leases

16. As noted above, the Debtor seeks to assume and assign certain Contracts and Leases identified on Schedule 1.4 of the APA ("Assumed Executory Contracts"). M1 will assume the Assumed Executory Contracts as set forth on Schedule 1.4 of the APA and pay the cure amounts related thereto. The counterparty to each such Assumed Executory Contract has agreed to the assumption thereof by the Debtor, the assignment thereof to M1, the cure amount due such counterparty and the dismissal of the Debtor's Chapter 11 case without further notice.

17. These Assumed Executory Contracts and their respective counterparties are listed on **Exhibit C** and each such counterparty's consent is attached thereto, collectively**.**

18. In each consent every counterparty has agreed to release the Debtor and the Debtor's bankruptcy estate of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts under section 365(k) of the Bankruptcy Code.

Sale Order

19. The Debtor requests that the Court enter an order substantially in the form attached to this Motion as **Exhibit D** and incorporated herein by reference (the "Sale Order") authorizing the Debtor to sell the Purchased Assets free and clear of all liens, claims, interests and encumbrances under section 363 of the Bankruptcy Code, and authorizing the assumption by the Debtor and assignment to the M1 of the Assumed Executory Contracts under section 365 of the Bankruptcy Code (as discussed below). The Debtor will submit and present additional evidence, as necessary, at the hearing on this Motion demonstrating that the Sale is fair, reasonable and in the best interest of the Debtor's bankruptcy estate and all interested parties.

Dismissal

20. The Debtor proposes the following terms and conditions for the settlement of all claims and the dismissal of this case (the "Dismissal Conditions"):

a) Upon Closing under the Asset Purchase Agreement, M1 shall have full responsibility for satisfying the claims of the nonpriority unsecured creditors listed on Debtor's Schedules in the Debtor's Chapter 11 Case;

b) M1 shall file a report of such satisfaction of the claims of the nonpriority unsecured creditors listed on Debtor's Schedules in the Debtor's Chapter 11 Case within fourteen (14) days after the entry of the Sale Order (the "Report of Satisfaction)";

c) All professionals whose retention has been authorized by the Court shall file final fee applications within fourteen (14) days following M1's Report of Satisfaction; and

d) Within seven (7) days after the last order approving professional fees becomes a Final Order, the Debtor's counsel shall file a Notice thereof and tender an Order of Dismissal of the case for entry by the Court.

Applicable Legal Authority

A. The Sale of the Purchased Assets is Authorized by Section 363 as a Sound Exercise of the Debtor's Business Judgment.

21. In accordance with Bankruptcy Rule 6004, sales of property rights outside of the ordinary course of business may be by private sale or public auction. The Debtor has determined that the Sale of the Purchased Assets by private sale will enable it to obtain the highest and best offer for these assets (thereby maximizing the value of its bankruptcy estate) and is in the best interests of the Debtor's creditors. The Asset Purchase Agreement is the result of comprehensive, arm's length negotiations for the Sale of the Purchased Assets, and the Sale pursuant to the terms of the Asset Purchase Agreement will provide a greater recovery for the Debtor's creditors than would be provided by any other existing alternative. In fact, the Sale will satisfy all of the Debtor's scheduled claims in the Chapter 11 Case.

22. Section 363 of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See*, *e.g.*, *Meyers v. Martin* (*In re Martin*), 91 F.3d 289, 295 (3d Cir. 1996); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 P.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (Bankr. W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr. D. Del. 1991); *see also Official Committee of Unsecured Creditors v. The LTV Corp.* (*In re Chateaugay Corp.*), 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigation and/or Creditors v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

23. The paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. *See*, *e.g.*, *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (finding that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *Integrated Resources*, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the ... [trustee's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988). As long as the sale appears to enhance a debtor's estate, court approval of a trustee's decision to sell should only be withheld if the trustee's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331

B.R. 251, 255 (Bankr. N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (Bankr. 9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (Bankr. D. P.R. 1991) ("The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee's business judgment is subject to great judicial deference.").

24. Applying section 363, the proposed Sale of the Purchased Assets should be approved. As set forth above, the Debtor has determined that the best method of maximizing the recovery of the Debtor's creditors would be through the Sale of the Purchased Assets. Prior to the receipt of M1's Asset Purchase Agreement, the Debtor received an offer to purchase the Purchased Assets from Direct Performance Data, Inc. ("DPD"), and which at that point was the highest and best offer for those assets. However, that bid initially had a maximum value in the amount of $500,000, and after extensive negotiations following M1's and the Noteholder's objection to the Sale Motion, DPD only agreed to increase the maximum value to $750,000. The value of M1's bid far exceeds that amount. M1's credit bid will eliminate all of the approximate $3 million in secured and general unsecured claims against the Debtor's bankruptcy estate.

25. There is a limited universe of potential acquirers of the Purchased Assets, namely other data services companies. Based on the limited marketplace for the Debtor's assets, and the Debtor's business judgement, the Debtor submits that M1's APA is the best offer that it can reasonably expect to receive. In fact, given the satisfaction of the claims against the Debtor's bankruptcy estate, the only party in interest that could object to the sale is Pensa, LLC, the Debtor's single-member. However, Pensa, LLC supports the sale to M1. Accordingly, the Debtor does not intend to solicit any interest from other potential purchasers and submits that any such effort would be futile.

26. The Debtor believes that the value the Debtor's bankruptcy estate – and, thus, the Debtor's creditors – will receive for the Sale of the Purchase Assets, the Creditor Agreements and the Assumed Executory Contracts exceeds any value the Debtor's bankruptcy estate could get for the Purchased Assets if the Debtor were required to liquidate its assets piecemeal or in any other manner. The Debtor believes that the value of the consideration to be received for the Purchased Assets under the Asset Purchase Agreement is fair and reasonable.

B. The Sale of the Purchased Assets Free and Clear of Liens and Other Interests is Authorized by Sections 363(f) and 105(a) of the Bankruptcy Code.

27. The Debtor further submits that it is appropriate to sell the Purchased Assets free and clear of all liens pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the sale proceeds of the Purchased Assets to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

(i) applicable nonbankruptcy law permits sale of such property free and clear of such interests;

(ii) such entity consents;

(iii) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

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

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

11 U.S.C. § 363(f).

28. This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

29. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets "free and clear" of liens and interests. *Michigan Employment Sec. Comm'n v. Wolverine Radio Co.* (*In re Wolverine Radio Co.*), 930 F.2d 1132, 1147 n. 24 (6th Cir. 1991); *In re Bygraph, Inc.*, 56 B.R. 597, 606 n. 8 (Bankr. S.D.N.Y. 1986).

30. The Debtor believes that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Purchased Assets pursuant to the Asset Purchase Agreement. In particular, M1, which acquired the claim of the Noteholder, has consented to the Sale of the Purchased Assets free and clear of all liens.

31. Although section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the United States Court of Appeals for the Third Circuit specifically addressed the scope of the term "any interest." That Court observed that while some courts have "narrowly interpreted that phrase to mean only in rem interests in property," the trend in modern cases is towards "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" *Id.* At 289 (citing 3 *Collier on Bankruptcy* ¶ 363.06[1] (15th rev. ed. 1988)). As determined by the United States Court of Appeals for the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-82 (4th Cir. 1996), the scope of section 363(f) of

the Bankruptcy Code is not limited to in rem interests. Thus, debtors can "sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." *Folger*, 209 F.3d at 258.

32. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes such assets free from successor liability resulting from pre-existing claims. *See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Company v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds is consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *WBO P'ship v. Virginia Dept. of Medical Assistance Servs.* (*In re WBO P'ship*), 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).[3] The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from the Debtor's pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is entitled to know that the Debtor's assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction Accordingly, consistent with above-cited case law, the order approving the Sale should state that the M1 is not liable as a successor under any theory of successor liability, for claims that encumber or relate to or interest in the Purchased Assets.

[3] Some courts, concluding that section 363(f) of the Bankruptcy Code does not empower them to convey assets free and clear of claims, have nevertheless found that section 105(a) of the Bankruptcy Code provides such authority. *Volvo White Truck Corp. v. Chambersburg Beverage, Inc.* (*In re White Motor Credit Corp.*), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

C. The Assumption and Assignment of Certain Executory Contracts and Unexpired Leases is Appropriate.

33. Section 365(a) of the Bankruptcy Code provides that, subject to the court's approval, a trustee "may assume or reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Ostich* (*In re Klein Sleep Prods., Inc.*), 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc.* (*In re Orion Pictures Corp.*), 4 F.3d 1095, 1099 (2d Cir. 1993).

34. Under section 365(f)(2) of the Bankruptcy Code, a trustee may assign an executory contract or unexpired lease of nonresidential real property if:

> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

35. The meaning of "adequate assurance of future performance: depends upon the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Arrais* (*In re Carlisle Homes, Inc.*), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.").

36. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property

assigned. *In re Bygraph, Inc.*, 56 B.R. at 605-06 (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

37. Here, each counterparty to each Assumed Executory Contract has agreed to the assumption thereof by the Debtor, the assignment thereof to M1, the cure amount due such counterparty and the dismissal of the Debtor's Chapter 11 case without further notice.

D. M1 should be Afforded All Protections Under Section 363(m) as a Good Faith Purchaser.

38. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from the debtor's estate notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states that:

> The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code "fosters the 'policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.'" *In re Chateaugay Corp.*, 92 Civ. 7094 (PKL), 1993 U.S. Dist. LEXIS 6130, * 9 (S.D.N.Y. May 10, 1993) (citations omitted).

39. The selection of M1 is the product of arm's length, good faith negotiations. The Debtor requests a finding by this Court that M1 is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

E. Relief from the Fourteen-Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.

40. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Similarly, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease ... is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtor requests that the Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

41. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen-day stay period, *Collier on Bankruptcy* suggests that the fourteen-day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." *Collier on Bankruptcy* ¶ 6004.11 (16th ed.). Furthermore, *Collier on Bankruptcy* provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

42. The Debtor hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal.

F. Dismissal of the Case is in the Best Interests of Creditors.

43. Pursuant to sections 1112(b)(1) of the Bankruptcy Code, and based on the existence of cause under section 1112(b)(4)(A)-(P) of the Bankruptcy Code and the totality of the circumstances relating to this Chapter 11 Case, as more fully set forth herein, the Debtor respectfully request that this Court dismiss the Debtor's Chapter 11 Case once the Dismissal Conditions have been fulfilled. A determination of whether "cause" for dismissal exists is conducted on a case-by-case basis. *In re Forum Health,* 444 B.R. 848, 856 (Bankr. N.D. Ohio 2011) (quotation omitted).

44. Section 1112(b)(1) of the Bankruptcy Code provides that:

> on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interest of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112(b)(1). 11 U.S.C. § 1112(b)(4) sets forth a list of sixteen (16) non-exclusive factors that may constitute cause to dismiss a chapter 11 case. *In re Lee,* 467 B.R. 906, 917 (B.A.P. 6th Cir. 2012). See generally, *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 674 (11th Cir. 1984) (citing H.R. Rep. No. 595, 95 Cong., 1st Sess. 406 (1977) ("The court will be able to consider other factors as they arise, and use its equitable powers to reach an appropriate result in individual cases")). "Cause" may include circumstances such as a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," 11 U.S.C. § 1112(b)(4)(A), and a "failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court," 11 U.S.C. § 1112(b)(4)(J).

45. The Supreme Court's recent decision in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017) is not applicable to the request for dismissal of this Chapter 11 Case. The Supreme Court's holding in *Jevic* was that a bankruptcy court cannot approve a "structured dismissal" that provides of distributions that do not follow the ordinary priority rules without the affected creditors consent. This Motion does not request any priority skipping distributions and the dismissal of this case is with the consent or payment of all nonpriority scheduled creditors and Debtor has scheduled no priority creditors. Rather, the Sale proposes to satisfy all secured and unsecured claims, all administrative, priority and general unsecured claims.

46. The Debtor is selling substantially all of its assets and will cease operations, although it will continue collecting for services rendered prior to the Closing. There are *de minimus* tangible assets in the bankruptcy estate. The Debtor's assets are only of value to M1 if the assets can be transferred immediately such that vendors and customers will continue to utilize the services generated from the Debtor's assets. M1 is not willing to purchase the Debtor's assets through a Plan process or via an extended sale process under section 363 of the Bankruptcy Code as the risk of vendors and customers of the Debtor ceasing their business relationships is too great. Further, all debts incurred prior to the Petition Date as well as all obligations after the Petition Date will be satisfied. There will be no further need for the Debtor to be before the Court. Accordingly, "cause" exists to dismiss the Chapter 11 Case following approval of the Sale and satisfaction of all claims against the Debtor's bankruptcy estate.

47. Finding "cause," however, is only the first of two assessments required under the Bankruptcy Code before dismissing a case. Once "cause" is found, the Court must determine whether dismissal or conversion is in the best interests of creditors. *In re Forum Health, supra,* 444 B.R. at 856. In light of the consensual Creditor Agreements that each nonpriority scheduled

creditor of the Debtor has entered with M1 or has been paid by M1, the proposed dismissal satisfies each scheduled nonpriority creditor's claim. Further, the holders of claims relating to the Assumed Executory Contracts are being satisfied. Due to the size of the Noteholders secured claim, it is not anticipated that the unsecured creditors would receive any distribution through an alternative sale process or a plan of liquidation. The Debtor cannot propose a confirmable plan of reorganization following the Sale of the Purchased Assets, and M1 is unwilling to support a plan of liquidation. Thus, it is in the best interest of Debtor's creditors for the Chapter 11 Case to be dismissed as requested herein.

Compliance with Local Rules

48. The Debtor believes that the Motion generally complies with Local Rules as applicable.

Notice

PLEASE TAKE NOTICE that an expedited hearing shall be held on the Motion on **Wednesday, August 2, 2017 at 9:00 a.m. (Eastern Time)** before the Honorable Gregory R. Schaaf, at the U.S. Bankruptcy Court for the Eastern District of Kentucky, located at 100 East Vine Street, 2nd Floor Courtroom, Lexington, Kentucky 40507.

[*remainder of page intentionally left blank*]

WHEREFORE, the Debtor respectfully requests that the Court enter an order: (i) granting the Motion, (ii); approving the Sale and the assumption and assignment of the Assumed Executory Contracts; (iii); approving the Dismissal Conditions and authorizing and directing the parties to fulfill them; (iv) subsequently, to enter an order, pursuant to 11 U.S.C. § 1112(b), dismissing this Chapter 11 Case; and (v) granting such other and further relief as the Court deems just an proper.

Dated: July 28, 2017

Respectfully submitted,

/s/ James R. Irving

James R. Irving
April A. Wimberg
Christopher B. Madden
BINGHAM GREENEBAUM DOLL LLP
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
Telephone: (502) 587-3606
Facsimile: (502) 540-2215
E-mail: jirving@bgdlegal.com
awimberg@bgdlegal.com
cmadden@bgdlegal.com

Counsel to the Debtor, Xcelerated, LLC

CERTIFICATE OF SERVICE

I certify that on July 28, 2017, the Motion was served electronically through the Court's ECF system to all persons receiving electronic notifications in the Chapter 11 Case. Also on July 28, 2017, a copy of the Motion was sent via overnight delivery to the Debtor, the Office of the United States Trustee, all creditors on Debtor's Matrix filed herein at the addresses set forth thereon or at the address set forth below:

Xcelerated, LLC 2940 Hebron Park Drive, Suite 307 Hebron, KY 41048	Xcelerated Investments, Inc. 400 Main Street, 3rd Street LaCrosse, WI 54601
Kent Durning STOLL KEENON OGDEN PLLC 500 West Jefferson Street, Suite 2000 Louisville, Kentucky 40202	Office of the United States Trustee 100 East Vine Street, Suite 500 Lexington, KY 40507
Duke Energy 1000 E Main Street Mail Drop WP 890 Plainfield, IN 46168	Time Warner Cable Attn: Legal 13820 Sunrise Valley Dr. Herndon, VA 20171
M1 Data & Analytics LLC 1000 NW 65th Street, Suite 200 Ft. Lauderdale, FL 33309	National Auto Research a Division of Hearst Media Corp, DBA Black Book Attn: Jared Kalfus, Sr VP Sales PO Box 758 Gainesville, GA
Broadtela 1491 Polaris Parkway, Ste. 65 Columbus, OH 43240	Authenticom, Inc. 300 Main Street, Suite 300 Lacrosse, WI 54601
JKL Global, LLC P.O. Box 698 Palisades, NY 10964	R. L. Polk & Co. 26933 Northwestern Hwy Southfield, MI 48033-4703
Carlos de Zayas LYDECKER DIAZ LLP 1221 Brickwell Avenue, 19th Floor Miami, FL 33131	Taft A. McKinstry Christopher G. Colson FOWLER BELL PLLC 300 West Vine Street, Suite 600 Lexington, KY 40507

/s/ James R. Irving

EXHIBIT A

(Asset Purchase Agreement)

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the ____ day of ________, 2017, by and between **XCELERATED LLC**, a Florida limited liability company (referred to herein as "Seller"), and **M1 DATA & ANALYTICS LLC**, a Florida limited liability company (referred to herein as "Buyer").

RECITALS

WHEREAS, Seller is in the business of database marketing, data hygiene, analytics, and software development, including but not limited to list rental and the DataVast business (the "Business").

WHEREAS, Buyer has acquired Seller's secured debt to Xcelerated Investments, Inc. n/k/a 621 Holding, Inc. ("621") and from 621's affiliate, Authenticom LLC ("Authenticom"), Authenticom's unsecured claim against Seller; and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, on the terms and subject to the conditions of this Agreement, all of Seller's assets (except as otherwise set forth in this Agreement) in exchange for the consideration set forth below to be given by Buyer.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the adequacy of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

1. Sale of Business and Assets.

1.1 Seller agrees to sell, convey, transfer, assign and deliver to Buyer, and Buyer agrees to purchase from Seller, free and clear of any and all claims and encumbrances, all of Seller's right, title and interest in and to all of the Purchased Assets (as hereinafter defined). "Purchased Assets" means all of the assets of the Seller other than the Excluded Assets (as defined in Section 1.3), including but not limited to the following: all tangible assets, inventory (including potentially obsolete and non-job specific inventory), scripts, code, procedures, supplies, specifications, equipment, work in progress, pending orders, the DataVast application and database, all intellectual property (including all trademarks, service marks, patents, copyrights, and trade secrets), software, telephone numbers, URLs, websites, domain names, the Contracts (as defined below), all deposits under the Contracts, all formulas, business methodology, goodwill, client contact lists, client records and files, names of the Seller used in the Seller's business, including "Xcelerated", "Compliant Auto Resource Solution (C.A.R.S.)", "AutoVINdication", "I Sold It" and "DataVast" and all derivations of such names used by the Seller, all permits, licenses and prepaid expenses

relating to the Purchased Assets, all claims of the Seller against third parties relating to the Purchased Assets and the Business, all avoidance claims or causes of action under the Bankruptcy Code or applicable law with respect to the Purchased Assets, all cash and accounts receivable of Seller existing as of the Closing Date except such amounts therefrom as Seller will need to pay its final payroll and accrued and unpaid payroll taxes and related payroll obligations, and administrative expenses incurred in Seller's Chapter 11 Case , and all other assets or business "know how" used in the operation of the Business, wherever located, and all goodwill associated with the Business and the Purchased Assets.

1.2 All of Seller's cash, and all accounts receivable received by Seller on or after the Closing shall be held in trust by Seller for the benefit of Buyer and, except such amounts therefrom as Seller will need to pay its final payroll and accrued and unpaid payroll taxes and related payroll obligations, and administrative expenses incurred in Seller's Chapter 11 Case, shall be paid over to Buyer promptly within ten (10) days of receipt by Seller along with copies of all remittance advices and checks related to such payments.

1.3 The Purchased Assets shall not include any of the right, title, or interest of Seller in or to Seller's corporate minute books or other assets set forth on Schedule 1.3 attached hereto and incorporated herein by reference (collectively, the "Excluded Assets").

1.4 Seller has executed contracts (including the lease for Seller's Hebron, Kentucky offices) as identified in Schedule 1.4 (the "Contracts"). Buyer agrees to assume and undertake to perform and discharge when due, only the amounts currently due by Seller under each Contract ("Cure Amounts") set forth on Schedule 1.4 and the post-Closing (as defined below) obligations of Seller under the Contracts that, by their terms, arise after the Closing Date (excluding, for the avoidance of doubt, any Liabilities (as defined below) under the Contracts arising from violations, noncompliance or breaches thereof on or prior to the Closing Date) (the "Assumed Liabilities"). "Liabilities" means all debts, obligations, duties and liabilities of every type and trade, known or unknown, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, assertable or unassertable, fixed, contingent, absolute or otherwise, and all costs related thereto. Buyer does not agree to assume and is not responsible for any fees, penalties, or costs associated with the Contracts in the event the contracting party refuses to assign the contract to Buyer or requires a fee or other payment to effect an assignment. Except for the Contracts, Buyer shall not assume and shall not be responsible for any liabilities or obligations under any of Seller's contracts or leases.

1.5 Except for the Assumed Liabilities and the Unpaid Administrative Expense Claims, the Buyer will not assume any Liabilities of the Seller, known or unknown, and Seller shall remain solely responsible for and shall retain, pay, perform, and discharge, any and all Liabilities of Seller, known or unknown (the "Excluded Liabilities"), including without limitation, the following:

(a) any Liabilities related to any employees or independent contractors of Seller, including all liability for the vacation, sick and personal

time off, termination or severance pay, unemployment benefits and any other benefits to which such employees or independent contractors may be entitled by virtue of their employment or service (or termination thereof) with Seller prior to the Closing, except as specifically provided for in Section 14 below;

(b) any Liabilities related to any termination or severance pay of unemployment benefits due to Seller's respective employees or independent contractors by virtue of their employment or engagement (or termination of their employment or engagement) with Seller and all Liabilities under the WARN Act or any similar local or state legal requirement;

(c) all taxes required to be withheld (whether or not actually withheld by Seller) from amounts paid or payable to any employee or independent contractor of Seller on or prior to the Closing Date;

(d) any Liabilities for taxes of Seller, including income taxes, arising out of or in connection with this Agreement;

(e) all Liabilities related to any debt of Seller, except those debts set forth in Section 2 as a part of the Purchase Price;

(f) all Liabilities arising with respect to any Excluded Asset or that otherwise does not relate to the Business; and

(g) any and all other Liabilities and obligations of every kind of Seller incurred in connection with, or by reason of, the ownership and operation of the Business and Purchased Assets prior to the Closing.

2. Consideration for Purchased Assets. As consideration for the Purchased Assets, Buyer shall: (i) provide a credit bid in the amount of $538,811.38 against the indebtedness owed by Seller to Buyer pursuant to the terms of that certain Promissory Note, dated October 31, 2015, made by Seller to Xcelerated Investments, Inc. n/k/a 621 Holding, Inc., which is now held by Buyer; (ii) will waive its general unsecured claims against Seller; (iii) will pay the allowed nonpriority unsecured creditors of Seller set forth on Schedule 2 the amounts set forth on Schedule 2 and pay the amounts set forth on Schedule 1.4 under the Contracts; and (iv) to the extent not otherwise satisfied by the Seller and its remaining assets following the Sale, will pay all allowed administrative expense claims in Seller's Chapter 11 Case, including, without limitation, earned but unpaid employee obligations, payroll taxes, fees owed to the Office of the United States Trustee, and professionals' fees (together, the "Unpaid Administrative Expense Claims").

3. Allocation; Transfer Taxes. Buyer shall allocate the Purchase Price and the Assumed Liabilities (to the extent required by law) among the Purchased Assets in a manner reasonably acceptable to Seller. Buyer will prepare and deliver IRS Form 8594 to Seller within forty-five (45) days after the Closing Date to be filed with the IRS relating to

Buyer's acquisition of the Purchased Assets. Buyer shall be responsible for sales, use, transfer, recording and similar taxes or fees assessed or payable in connection with the transfer of the Purchased Assets to Buyer.

4. **Prorations**. At the Closing, ad valorem taxes and tangible property taxes on the Purchased Assets shall be apportioned pro rata on a daily basis so that (a) such ad valorem taxes and tangible property taxes on the Purchased Assets for that portion of calendar year 2017 before the Closing Date shall be borne by Seller, and (b) such ad valorem Taxes and tangible property taxes on the Purchased Assets for that portion of calendar year 2017 on and after the Closing Date shall be borne by Buyer. In addition, on the Closing Date, the expenses related to the Purchased Assets, including any prepaid expenses, if any, shall be apportioned pro rata on a daily basis so that (i) such part of the relevant charges and prepaid attributable to the period before the Closing Date shall be borne by Seller, and (ii) such part of the relevant charges and prepaids attributable to the period on and after the Closing Date shall be borne by Buyer. The net amount of these costs and fees apportioned hereunder shall be paid by Seller or Buyer, as applicable, at the Closing. Buyer and Seller agree that the foregoing calculations shall be based upon the most recently ascertainable tax rates and assessed values, and the most recent information regarding such charges. Seller and Buyer agree that, to the extent the actual taxes or charges differ from the amount so apportioned at Closing, the parties will within thirty (30) days after receipt of a request from Buyer or Seller, as applicable, make all necessary adjustments by appropriate payments between themselves promptly following the Closing.

5. **Court Approval**. This Agreement is subject to approval by the United States Bankruptcy Court for the Eastern District of Kentucky ("Bankruptcy Court") pursuant to Bankruptcy Code Section 363. Should the Seller not obtain approval of this Agreement by August 10, 2017, this Agreement shall terminate, unless otherwise agreed to by both Seller and Buyer in writing.

6. **Sale Order**. The obligations of Buyer and Seller to proceed to Closing are contingent upon the Bankruptcy Court issuing an order (the "Sale Order") approving the sale of the Purchased Assets to Buyer. The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by Seller of this Agreement, (B) the sale of the Purchased Assets to Buyer on the terms set forth herein and free and clear of all liens, claims, encumbrances or other interests, and (C) the performance by Seller of its obligations under this Agreement; (ii) authorize and empower Seller to assume and assign to Buyer the Assumed Contracts; and (iii) find that Buyer is a "good faith" buyer within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to Seller, and grant Buyer the protections of Section 363(m) of the Bankruptcy Code.

7. **Closing Date.** The closing of the transactions contemplated in this Agreement (the "Closing") shall occur on a date (the "Closing Date") within 5 days after the date Bankruptcy Court has entered the Sale Order. The Closing shall take place through escrow by mutual exchange of documents.

8. Seller's Closing Deliverables. At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(a) a Bill of Sale, Assignment and Assumption Agreement in the form agreed to by the parties hereto, executed by Seller;

(b) Seller's Articles of Amendment evidencing a change in Seller's name, which is acceptable to Buyer;

(c) a copy of the resolutions adopted by the sole member of Seller, approving the transactions contemplated in this Agreement and the agreements contemplated hereunder, certified by an officer or other authorized person of the sole member of Seller as being correct, complete and in full force and effect as of the Closing Date; and

(d) such other documents and instruments as Buyer may reasonably request in order to accomplish the intents and purposes of this Agreement.

9. Buyer's Closing Deliverables. At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(a) a Bill of Sale, Assignment and Assumption Agreement in the form agreed to by the parties hereto, executed by Buyer;

(b) an employment agreement pursuant to which Buyer will employ Pam Lang on terms that are reasonably acceptable to Buyer and Pam Lang;

(c) a copy of the resolutions adopted by the board of directors of Buyer, approving the transactions contemplated in this Agreement and the agreements contemplated hereunder, certified by an officer or other authorized person of Buyer as being correct, complete and in full force and effect as of the Closing Date; and

(d) such other documents and instruments as Seller may reasonably request in order to accomplish the intents and purposes of this Agreement.

9A. Conditions of Buyer's Closing Obligations. In the event (a) Seller is unable to secure the assignment to the Buyer of the Contracts identified in Schedule 1.4, or (b) the Closing does not take place within 5 days of the Sale Order's entry, through no fault of the Buyer, then the Buyer is under no obligation to close the sale transaction contemplated by this Agreement. At all times after the execution of this Agreement, Buyer may reasonably request documents and information related to the Purchased Assets or Business, and Seller shall produce or provide such documents within a reasonable time.

10. Further Assurances. Each party shall, from time to time, at another party's request, and without further consideration, perform such acts and execute and deliver to the other

party or parties such other and further instruments, documents and other considerations as the other party or parties may reasonably request for the more effective consummation of the transactions contemplated hereby and the satisfaction by each party of its obligations under this Agreement.

11. Warranties and Representations of the Seller. Seller hereby warrants and represents to Buyer that as of the Closing Date:

11.1 Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Florida. Seller has the power to own all of its assets and to carry on the Business the same as it is now being conducted.

11.2 Seller shall transfer, sell and deliver to Buyer all of Purchased Assets free and clear of all liens, encumbrances, and Liabilities.

11.3 The execution and delivery of this Agreement do not, and the consummation of this transaction as contemplated herein will not, violate any provisions of, or result in the acceleration of obligations under any agreement, instrument, order, judgment or decree to which Seller may be a party or by which the Seller may be bound and which will affect Buyer, or result in the creation or imposition of any lien upon Seller or its Business, to which Seller has an ownership interest in, and/or under any contract or license to which Seller is a party. Seller has no subsidiaries.

11.4 Except as set forth on Schedule 12.4 attached hereto and incorporated herein by reference, there are no actions, litigation, investigations, condemnations, proceedings, suits, judgments or executions, of any kind or nature, pending against the Seller, nor to Seller's knowledge, threatened against, relating to or affecting Seller and/or any of the Purchased Assets.

11.5 The execution of this Agreement by Seller has been duly authorized by the sole member of Seller and, other than the Sale Order, no other authorization is required in connection with the performance by Seller of its obligations under this Agreement.

11.6 There are no State or Federal tax liens of any kind affecting the Purchased Assets, and there are no unpaid Federal or State income taxes due from Seller for any period on or prior to the Closing Date.

11.7 With respect to any of the Seller's employees engaged in the conduct of the Business and who may hereafter become employees of Buyer, Seller is not a party to any oral or written employment contract which is not terminable without liability, premium or penalty at any time upon notice.

11.8 Except as set forth on Schedule 12.8, Seller is not in default under or in breach of any terms or conditions of any of the Contracts, express or implied warranties, commitments or other arrangements, which relate to the Business and to which Seller has become a party in the ordinary course of business on or prior to the Closing Date.

11.9 Seller is in compliance with all laws, rules and regulations relating to the Business and the Purchased Assets, including privacy laws and regulations.

11.10 The personal property being sold hereunder is in good operating condition and repair, subject to ordinary wear and tear. All inventory items shall be of suitable age, quality, and condition for immediate sale.

11.11 Buyer shall not be responsible for any business, occupational, social security, unemployment, withholding or similar taxes of any kind related to the Business for any period before execution of this Agreement and the Closing Date.

11.12 No representation or warranty by Seller contained in this Agreement or in any Exhibit or Schedule attached hereto or in connection with the transaction contemplated hereby contains or will contain any untrue statement of material fact or will omit to state any fact necessary to make the statements herein or therein not misleading.

11.13 The financial statements of Seller furnished to Buyer to review incident to this Agreement have been prepared in accordance with sound accounting principles and are not materially inaccurate.

11.14 Seller does not own any real property. With respect to all real property leased by Seller, (a) there are no pending, or to the knowledge of Seller, threatened, condemnation proceedings relating to such real property or other matters affecting the current use, occupancy or value thereof, (b) to the knowledge of Seller, the buildings and improvements and each Seller's current use thereof are not in violation of applicable setback requirements, zoning laws or ordinances, and (c) there are no leases, subleases, licenses, concessions or other agreements, whether written or oral, granting to any other person or entity the right of use or occupancy of any portion of such real property and there are no parties in possession of any of such real property other than Seller.

11.15 Seller owns, or has obtained, proper licenses for the use of all intellectual property related to the Business. Seller has not received notice of any claim that it is in violation or infringement with, or in default under, any intellectual property related to the Business, or any agreement pertaining thereto. Seller's use of such intellectual property in the operation of the Business does not infringe on any rights of any third party and Seller can

convey rights to such intellectual property to Buyer without violation of, or infringement of, any right of any other party.

11.16 Except for express representations and warranties made by Seller in this Agreement, the Buyer and Seller acknowledge and agree that the sale of the Purchased Assets is "AS IS," "WHERE IS," and "WITH ALL FAULTS." SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH MIGHT OTHERWISE BE IMPLIED WITH RESPECT TO ANY OF THE PURCHASED ASSETS. WITHOUT LIMITING THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT SELLER AND ITS RESPECTIVE MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS OR AFFILIATES HAVE MADE NO REPRESENTATION OR WARRANTY CONCERNING (A) ANY USE TO WHICH THE PURCHASED ASSETS MAY BE PUT, (B) ANY FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE PURCHASED ASSETS, OR (C) ANY OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS, REPRESENTATIVES, SUCCESSORS, ASSIGNS OR AFFILIATES.

12. **Warranties and Representations of Buyer.** As of the Closing Date, Buyer represents and warrants to Seller the following:

12.1 Buyer is a duly organized limited liability company, validly existing, and in good standing under the laws of the State of Florida. Further, Buyer has corporate power to own all of its property and assets and to carry on business together with the necessary power and authority to purchase the Purchased Assets from Seller.

12.2 Buyer has obtained all necessary authorizations and approvals for the execution and delivery of this Agreement and performance of its obligations hereunder.

12.3 No provisions exist in any agreement, article, document, or instrument to which Buyer is a party or by which it is bound which should be violated by consummation of the transactions contemplated by this Agreement.

13. Employment Matters. Seller shall terminate all persons employed by Seller in connection with the Business ("Employees") effective as of Closing. Schedule 13 attached hereto contains (i) a list of all Employees as of the date hereof, (ii) the then-current annual or hourly compensation and/or commission rate of such Employees, (iii) the expected hours worked per week of such Employees, (iv) the start and end date of the assignments of such Employees, as applicable and (v) each Employee's accrued vacation, sick and personal time-off. With the prior written consent of Seller, Buyer may, prior to Closing, conduct and take interviews with existing Employees of the Business. Seller shall have the right to be present at all such interviews. Buyer may, at its sole discretion, elect to retain any Employee of Seller. At least two business days prior to Closing, Buyer shall advise Seller, in writing, which (if any) Employees Buyer intends to retain after Closing (such retained Employees the "Hired Employees"). Seller shall update Schedule 13 within three business days prior to Closing to include all vacation, sick and personal time off (PTO) for the Hired Employees as of Closing. Notwithstanding anything in this Agreement to the contrary, Buyer agrees to assume Seller's Liabilities related to vacation, sick and personal time off (PTO) for all Hired Employees.

14. Confidentiality. The parties entered into that certain Mutual Confidentiality and Nondisclosure Agreement (the "NDA"), which is incorporated fully in this Agreement by this reference. The parties reaffirm all of their respective obligations under the NDA. Each party agrees to hold in strict confidence any business or other information concerning the other party which is of a non-public nature and of which is not already known by the recipient of the information or its directors, managers, shareholders, members, or officers (as applicable), and which becomes known to the recipient in connection with the consummation of the transactions contemplated in this Agreement. Notwithstanding the foregoing, such information may be revealed to those persons who are advising the recipient with regard to the transactions contemplated hereby, or otherwise have a reasonable and legitimate need to know, provided said persons agree to be bound by these non-disclosure provisions. The parties will mutually agree on how the consummation of the transactions contemplated herein shall be disclosed to outside parties. Seller acknowledges that during the term of its ownership of the Business, Seller acquired information which could include information concerning customers, system documentation, business plans and/or any other confidential or proprietary information belonging to the Business. Seller acknowledges that this confidential information, if used, misappropriated or disclosed, would constitute a breach of trust and could cause irreparable injury to the Business. Therefore, Seller agrees to hold and safeguard the confidential and proprietary information, and not misappropriate or divulge to any person or make available to anyone for use any of the confidential and proprietary information Business, which shall survive the execution of this Agreement.

15. Non-Disparagement. The parties agree not to make any statement, written or verbal, to any third party reasonably likely to be harmful or injurious to the goodwill, reputation or business standing of Seller, Buyer and/or the Business at any time in the future.

16. Finder's or Broker's Fee, Expenses. Each party shall pay its own legal fees, filing and recording fees and other expenses, incident to the preparation and the closing of the

transactions hereunder. Each of the parties represents and warrants that it has not dealt with any broker or finder in connection with any of the transactions contemplated hereunder.

17. **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if hand delivered, on the first business day after transmission if sent by nationally recognized overnight courier, or on the date received if sent by confirmed electronic mail transmission, and properly addressed as follows:

Seller: Xcelerated, LLC
Attn: Pam Lang
6780 Plantation Pines Blvd.
Ft. Myers, FL 33966
Email: pam.lang@xcelerated.com

With a copy to: Raja J. Patil
James R. Irving
3500 National City Tower
101 South Fifth Street
Louisville, KY 40202
Email: rpatil@bgdlegal.com
jirving@bgdlegal.com

Buyer: M1 Data & Anayltics, LLC.
Attn: Greg Ashe
1000 NW 65th Street, Suite 200
Fort Lauderdale, FL 33309
Email: gashe@m1-data.com

With a copy to: Zachery Ryan Kobrin, Esq.
8900 SW 107th Ave., Suite 206
Miami, FL 33176-1452
Email: zk@kobrinpa.com

Carlos L. de Zayas, Esq.
Lydecker Diaz
121 Brickell Ave., 19th floor
Miami, FL 33131
Email: cdz@deckerdiaz.com

Either party may change the address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

18. **Venue.** The parties agree that any and all claims arising from or in connection with this Agreement shall be brought before the United States District Court of the Eastern

District of Kentucky and the parties hereby expressly waive any objections to venue or inconvenient forum for any suits brought in such court.

19. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20. Modification of Agreement. This Agreement, together with its Exhibits and Schedules, constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties. No waiver of any of the provisions hereof shall be deemed a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

21. General Provisions.

21.1 Section headings are not considered as part of this Agreement but are included for convenience only.

21.2 Words used in the singular shall include the plural and the plural the singular. Words used in the masculine gender shall include the feminine and the neuter.

21.3 This Agreement may be executed simultaneously in two or more counterparts, each Agreement shall be deemed to be originals, and all together shall constitute one instrument for legal purposes.

21.4 Exhibits and Schedules referred to in this Agreement are an integral part of this Agreement and are hereby incorporated by reference into this Agreement.

21.5 The waiver by any party of a breach of any provision hereof shall not operate nor be construed as a waiver of any subsequent breach of the party.

21.6 This Agreement is not intended to, and shall not be construed to, confer upon any third party any right, remedy or benefit, nor is it intended to be enforceable by any third party, and shall only be enforceable by the parties hereto, and their respective successors and permitted assigns.

21.7 In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

21.8 Unless otherwise expressly provided, the word "including" does not in any manner limit the preceding words, terms or phrases.

22. Benefit. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

23. No Public Announcement. No party shall, without the prior approval of the other, which approval shall not be unreasonably withheld, conditioned or delayed, make any press release or other public announcement concerning the transactions contemplated in this Agreement, except as and to the extent that any such party shall be so obligated by law, in which case the other party shall be advised and the parties shall use their reasonable best efforts to cause a mutually agreeable release or announcement to be issued.

[The Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement on the day and year first written above.

SELLER:

XCELERATED LLC

By: **PENSA LLC**, its sole member

____
By: Pam Lang, Member

[Seller Signature Page to Asset Purchase Agreement]

BUYER:

M1 DATA & ANAYLTICS, LLC.

By: ______________________________________
Name: __________________________________
Title: __________________________________

[Buyer Signature Page to Asset Purchase Agreement]

Schedule 1.3

Additional Excluded Assets

The definition of Purchased Assets shall not include any of the foregoing:

1. Seller's minute book, membership interest records, company seal and any other records of Seller relating to its limited liability company organization;

2. All books, records, files, and papers (whether in hard copy or computer format) that are not used in, or that do not relate to or affect, the Business;

3. Any insurance policies to which Seller is a party.

Schedule 1.4

Executory Contracts and Unexpired Leases

	Cure Amount
Authenticom, Inc.	Claim acquired by M1
First Direct, Inc.	$_______
Kenneth J. Klekamp, Inc.	$_______
National Auto Research d/b/a Black Book	$_______
Strategic Marketing Services	$_______

[to be supplemented]

Schedule 2

Allowed Non-Priority Unsecured Claims

Creditor	Claim Amount	Amount to be Paid in Full Settlement
Authenticom, Inc.	$286,840.0	Claim now held by M1 Data
BB&T	539.29	TBD
Broadtela	692.00	$692.00 Paid
Duke Energy	212.05	$212.05 Paid
JKL Global, LLC	6,000.00	TBD
M1 Data and Analytics, LLC	Unknown	Purchaser
National Auto Research d/b/a Black Book, Inc.	10,250.00	$10,250.00 Paid
R.L. Polk & Co.	6,428.34	TBD
Time Warner Cable	282.50	$282.50 Paid

<u>Schedule 12.4</u>

Litigation

1. Complaint filed against Seller by M1 Data and Analytics, LLC in the Circuit Court of the Eleventh Judicial Circuit for Broward County, Florida (Case. No. 2017CA009064AXXXCE).

2. Chapter 11 Bankruptcy Petition filed by Seller in the United States Bankruptcy Court for the Eastern District of Kentucky, Case No. 17-20886.

Schedule 12.8

Defaults

1. Unpaid amounts under that certain Promissory Note, dated October 31, 2015, made by Seller in favor of Xcelerated Investments, Inc.

2. Unpaid amounts under that certain Master Services Agreement, dated July 13, 2015, between Authenticom, Inc. (predecessor in interest to Seller) and M1 Data and Analytics, Inc.

Schedule 13

Hired Employees

[To supplement]

Last Name	First Name	Accrued PTO (hours) as of 7/15 ending payroll report	Accrual Rate per pay period	accrual since 7/15 ***	Time taken since 7/15	Final Accrued PTO as of 8/4	Floating Holiday (hours)	Average Weekly Hours	Commission	Extra Comp (Biweekly)	Note
Bella	Wenda	101.533	6.154	9.231	-40	70.764	16	n/a	10% gross sales	$138	*
Benton	Indya	145.02	6.93	10.395		155.415	24	40	n/a	$138	*
Lang	Max	57.66	5.39	8.085		65.745	24	40	n/a		
Lang	Conor	127.05	5.39	8.085		135.135	24	40	n/a	$138	*
Lang	Pam	n/a		0			n/a	n/a	n/a	n/a	
Nee	Matt	36.6	5.39	8.085		44.685	0	n/a	10% net sales	$450	**
Patterson	Luc	71.9	6.93	10.395	-60	22.295	0	n/a	n/a		
Roberts	Teresa	95.17	6.93	10.395		105.565	0	40	n/a	$138	*
Stobie	Melissa	0	0	0		0	0	2-3 hrs per month	n/a		
Sundburg	Nancy	140.7	6.93	10.395		151.095	16	40	n/a	$138	*
Vagedes	Candice	18.6	6.93	10.395		28.995	8	40	n/a	$138	*

* Seller provides a small taxable amount per pay period in lieu of a company insurance plan

** Includes insurance stipend and flat bonus

***1 full pay period, plus 1/2 pay period

EXHIBIT B

(Creditor Agreement)

[*To be Supplemented with Signed Copies*]

CREDITOR AGREEMENT

The undersigned scheduled creditor ("Creditor") of Xcelerated, LLC ("Xcelerated"), the Debtor in Chapter 11 Case No. 17-20886-GRS (the "Case") , presently pending in the United States Bankruptcy Court, Eastern District of Kentucky (the "Court"); and M1 Data & Analytics, LLC ("M1") agree as follows:

1. Creditor owns and holds a general unsecured claim against the bankruptcy estate of Xcelerated in the amount of $______________________, for monies due and owing to Creditor by Xcelerated as of June 29, 2017, the date of filing of Xcelerated's Chapter 11 petition (the "Claim").
2. Creditor agrees to accept the sum of $ ___________________________ in full satisfaction of the Claim (the "Settlement Amount"), in exchange for M1's undertaking to pay, pursuant to this Agreement, the said Settlement Amount to Creditor, simultaneously with the Closing of the sale of the assets of Xcelerated to M1.
3. By execution of this Agreement and upon receipt of the foregoing payment, Creditor consents to the dismissal of the Case by the Court without further notice to Creditor.

M1 DATA & ANALYTICS, LLC

By: ________________________________

Gregory Ashe, Manager

Date: _________________________________

CREDITOR:

____

(Name of creditor)

By:___________________________________

Signature of creditor representative

____

Printed Name/Title of Creditor Representative