

ASSET PURCHASE AGREEMENT

THIS AGREEMENT dated as of the ____ day of _____, 200__,

BETWEEN:

3791351 Canada Inc.

CARRYING ON BUSINESS AS “CU-CONNECT”, a corporation
incorporated under the laws of Canada

(hereinafter referred to as “**CU-Connect**” or the “**Vendor**”)

- and -

[_____], a corporation incorporated under
the laws of [_____]

(hereinafter referred to as the “**Purchaser**”)

WHEREAS:

A. CU-Connect is in the business of providing switching services through the Interac and other networks for certain credit unions and other financial institutions to allow them to offer shared cash dispensing at automated teller machines (“**ATMs**”) and Point of Sale Direct Payment to their customers at vendor point of sale debit machines (the “**SS Business**”) and CU-Connect also offers transaction processing services for companies who issue customer gift cards, loyalty program cards and payroll cards (the “**PPCP Business**”);

B. CU-Connect has commenced proceedings in the Ontario Superior Court of Justice (the “**CCAA Court**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to which, among other things, KPMG Inc. has been appointed as the Monitor;

C. Subject to the issuance of both the Approval Order and the Vesting Order, the Vendor has agreed to sell, transfer and assign to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, all of the Vendor’s interest in and to the Purchased Assets;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party to the other, the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“**Accounts Receivable**” means all accounts receivable, notes receivable, book debts, trade debts and other debts at any time due or accruing due to the Vendor;

“**Affiliates**” has the meaning ascribed to that term under the *Canada Business Corporations Act* (Canada);

“**Agreement**” means this asset purchase agreement and all schedules attached hereto;

“**Applicable Law**” means, in respect of any person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law (zoning or otherwise) or Order that applies in whole or in part to such person, property, transaction or event;

“**Approval Order**” means an Order of the CCAA Court approving the Vendor entering into this Agreement and the transactions contemplated hereunder and providing for the issuance of the Vesting Order in form and content satisfactory to both the Vendor and the Purchaser, as confirmed in writing;

“**Assumed Liabilities**” has the meaning ascribed thereto in Section 3.3;

“**ATM**” has the meaning ascribed to that term in the first recital hereof;

“**Bankruptcy and Insolvency Act**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**Books and Records**” means all of the Vendor’s books, records, books of account, lists of suppliers and customers, business, research and development information, information and records relating to employees, sales, marketing, customer licensing, maintenance and support, and plans and projections within the control or possession of the Vendor on the Closing Date and all other documents, files, records, correspondence, electronic information (including emails and web page content), and other data and information, financial or otherwise within the control or possession of the Vendor on the Closing Date, including all data and information stored electronically, digitally or on computer related media, but specifically excluding any corporate or Tax books and records and any books and records relating to the Vault Cash Program;

“**Businesses**” means collectively the SS Business and PPCP Business;

“**Business Day**” means a day other than a Saturday, Sunday or any other day on which the principal chartered banks located in the City of Toronto are not open for the transaction of domestic business during normal banking hours;

“**CCAA**” has the meaning ascribed to that term in the second recital hereof;

“**CCAA Court**” has the meaning ascribed to that term in the second recital hereof;

“**Closing**” means the completion of the sale to and purchase by the Purchaser of the Purchased Assets and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such sale;

“**Closing Date**” means the _____ day of _____, 200__;

“**Customer Contracts**” means the Vendor’s contracts, agreements, instruments and other legally binding commitments or arrangements, written or oral, concerning the provision of services by the Vendor and listed in Schedule 1 attached hereto but excluding all such contracts, agreements and instruments pertaining to the Vault Cash Program;

“**Deposit**” has the meaning ascribed to that term in Section 4.2(a);

“**Equipment**” means all of the Vendor’s equipment (including the Vendor’s computer switch and other computers and computer accessories), office equipment, furniture, fixtures, furnishings and supplies of all kinds in the possession or control of the Vendor on the Closing Date, whether owned by the Vendor or in which the Vendor has an interest pursuant to a security agreement (as defined by the Personal Property Security Act (Ontario)) and including the items listed in Schedule 5 attached hereto;

“**Equipment Operating Leases**” means all operating leases of equipment or other personal property used by the Vendor is a lessee or under which the Vendor has rights as lessee and listed on Schedule 3 attached hereto but excluding all leases which are security agreements (as defined by the Personal Property Security Act (Ontario));

“**Excluded Assets**” has the meaning ascribed to that term in Section 3.2;

“**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, Tribunal, commission, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

“**GST**” means taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and “**GST Legislation**” means such act and regulations collectively;

“**Income Tax Act**” means, collectively, the *Income Tax Act*, R.S.C. 1985, 5th Supplement, the *Income Tax Application Rules*, R.S.C. 1985, 5th Supplement, and the *Income Tax Regulations*, in each case as amended to the date hereof;

“Intellectual Property” means the following intellectual property;

- (a) all trade-marks, trade names, designs, graphics, slogans, logos, service marks, brand names, internet domain names and other commercial symbols and all registrations and applications therefor;
- (b) all patents, patent rights (including divisions, reissues, renewals, re-examinations, continuations, continuations in part and extensions) and all applications therefor;
- (c) all copyrights, writings and other copyrightable works of authorship, including computer programs, databases and documentation therefor, integrated circuit topographies, industrial designs and other industrial property rights and all applications and registrations therefor and all renewals or extensions of such applications and registrations; and
- (d) all proprietary and non-public business information, including know-how, trade secrets, improvements, concepts, ideas, technical data, drawings, specifications therefor, business methodologies and processes, confidential information and any licensed property or technology;

“Inventories” means all of the Vendor’s inventories of every kind and nature and wheresoever situate in the possession or control of the Vendor on the Closing Date, including all new and unused production and shipping supplies, new and unused major maintenance items and all other materials and supplies on hand on the Closing Date;

“Leased Premises” means the leased premises listed in Schedule 4 attached hereto;

“Leasehold Improvements” means all leasehold improvements and all fixtures located on, in or about each of the Leased Premises on the Closing Date and all appurtenances thereto;

“Legal Proceeding” means any litigation, action, suit, investigation, hearing, claim, complaint, grievance, arbitration proceeding or other proceeding and includes any appeal or review and any application for same;

“Operating Contracts” means the contracts, agreements, instruments and other legally binding commitments or arrangements, written or oral, entered into by the Vendor in connection with the operation of the Businesses, other than the Customer Contracts, the Equipment Operating Leases and the Real Property Leases, and listed in Schedule 2 attached hereto but excluding all such contracts, agreements and instruments pertaining to the Vault Cash Program;

“Order” means any order, directive, judgment, decree, award or writ of any Tribunal;

“Original Confidentiality Agreement” means the confidentiality agreement dated _____, entered into by the Vendor and the Purchaser in connection with the transactions contemplated hereunder;

“**person**” shall have the meaning ascribed to it pursuant to the *Canada Business Corporations Act* (Canada);

“**PPCP Business**” has the meaning ascribed to that term in the first recital hereof;

“**PPCP Purchased Assets**” has the meaning ascribed to that term in Section 3.1(b);

“**PPCP Purchase Price**” has the meaning ascribed to that term in Section 4.1;

“**Prepaid Expenses**” means all the Vendor’s prepaid expenses and deposits at any time;

“**Purchased Assets**” means collectively the SS Purchased Assets and the PPCP Purchased Assets

“**Purchase Price**” means collectively the SS Purchase Price and PPCP Purchase Price;

“**Real Property Leases**” means the leases and other rights of occupancy relating to real property to which the Vendor is a party or under which the Vendor has rights, as lessee, and listed in Schedule 4 attached hereto;

“**Representative**” means, in respect of a person, each director, officer, employee, agent, solicitor, accountant, professional advisor and other representative of such person;

“**Required Consents**” means the consents and approvals listed in Schedule 7 attached hereto required from third parties which are required in connection with the sale of the Purchased Assets to the Purchaser and the completion of the other transactions contemplated herein;

“**SS Business**” has the meaning ascribed to that term in the first recital hereof;

“**SS Purchased Assets**” has the meaning ascribed to that term in Section 3.1(a);

“**SS Purchase Price**” has the meaning ascribed to that term in Section 4.1;

“**Tax Legislation**” means, collectively, the Income Tax Act and all federal, provincial, territorial, municipal, foreign, or other statutes imposing a tax, including all treaties, conventions, rules, regulations, orders, and decrees of any jurisdiction;

“**Tax**” or “**Taxes**” means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority under any applicable Tax Legislation, including, Canadian federal, provincial, territorial, municipal and local, foreign or other income, capital, goods and services, sales, use, consumption, excise, value-added, business, real property, personal property, transfer, franchise, withholding, payroll, or employer health taxes, customs, import, anti-dumping or countervailing duties, Canada Pension Plan contributions, employment insurance premiums, and provincial workers’ compensation payments, including any interest, penalties and fines associated therewith;

“**Time of Closing**” means 10:00 o’clock Toronto time on the Closing Date or such other time on the Closing Date as the parties hereto agree that the Closing shall take place;

“Transfer Taxes” means all present and future goods and services taxes, retail sales taxes, land transfer taxes, registration and recording fees, and any other taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets including, without limitation, GST;

“Tribunal” means any court (including a court of equity), arbitrator or arbitration panel and any other Governmental Authority, stock exchange, professional or business organization or association or other body exercising adjudicative, regulatory, judicial or quasi-judicial powers;

“Vault Cash Program” means the vault cash program business under which CU-Connect obtained and in turn provided cash to white label ATM owners to stock their ATMs pursuant to the terms of Vault Cash Services Agreements between CU-Connect and North York Community Credit Union Limited (“NYCCU”) and between Kawartha Credit Union (“Kawartha”) and CU-Connect and between CU-Connect and certain white label ATM owners;

“Vendor’s Intellectual Property” means all Intellectual Property, if any, used by the Vendor as at the Closing Date, including any Intellectual Property listed in Schedule 6 attached hereto but excluding all such Intellectual Property pertaining to the Vault Cash Program;

“Vendor’s Interest” means the right, title and interest, if any, of the Vendor in the Purchased Assets;

“Vesting Order” means an Order of the CCAA Court vesting title to the Purchased Assets in the Purchaser in form and content satisfactory to both the Vendor and the Purchaser, as confirmed in writing.

1.2 Currency

All references in this Agreement to monetary amounts, unless indicated to the contrary, are to the currency of Canada.

1.3 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any and all prior negotiations, understandings and agreements between the parties; provided that this Agreement shall not operate so as to supersede the Original Confidentiality Agreement, which Original Confidentiality Agreement shall remain unaffected hereby and legal and binding as between the parties thereto. This Agreement may not be amended or modified in any respect except by written instrument signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

1.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or relating hereto.

1.5 Singular, Plural and Gender

Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

1.6 Certain Words

In this Agreement, the words “including” and “includes” means “including (or includes) without limitation”.

1.7 Headings

The headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof.

1.8 Schedules

The parties hereby acknowledge and agree that disclosure made in a Schedule to this Agreement shall be deemed to be disclosure made in all other Schedules to this Agreement. The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule 1	–	Customer Contracts
Schedule 2	–	Operating Contracts
Schedule 3	–	Equipment Operating Leases
Schedule 4	–	Leases and Leased Premises
Schedule 5	–	Equipment
Schedule 6	–	Vendor’s Intellectual Property
Schedule 7	–	Required Consents
Schedule 8	–	Excluded Assets
Schedule 9	–	Allocation of Purchase Price
Schedule 10	–	Location of Offices and Purchased Assets
Schedule 11	–	List of Assumed Liabilities
Schedule 12	–	Lists of Excluded Employees and Employment Contracts to be Assumed by the Purchaser

ARTICLE 2 APPROVAL AND VESTING ORDERS

2.1 Approval and Vesting Order Required

The Purchaser acknowledges and agrees that this Agreement contains a condition (not capable of waiver) that, prior to the Closing, the Vendor shall have obtained the Approval Order and the Vesting Order, all as provided in this Agreement. If the Vendor shall not have obtained both the Approval Order and the Vesting Order after making application for them, this Agreement shall automatically terminate without any further action on the part of any of the Vendor or the Purchaser and neither party hereto shall be under any further obligation to the others to complete the transactions of purchase and sale contemplated by this Agreement and each party hereto shall be released of all of its obligations hereunder, other than as set forth in Sections 4.3, 9.1 and 9.6.

ARTICLE 3 PURCHASE AND SALE OF PURCHASED ASSETS AND ASSUMPTION OF LIABILITIES

3.1 Agreement of Purchase and Sale

Subject to the terms and conditions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the Vendor, at the Time of Closing, all of the Vendor's Interest in and to:

- (a) The following assets, property and undertaking of the SS Business (collectively, the "**SS Purchased Assets**"):
 - (i) the Equipment used by the Vendor in the SS Business;
 - (ii) the Customer Contracts pertaining exclusively to the SS Business;
 - (iii) the Operating Contracts pertaining exclusively to the SS Business;
 - (iv) the Inventories pertaining exclusively to the SS Business;
 - (v) the Real Property Leases;
 - (vi) the Leasehold Improvements;
 - (vii) the Equipment Operating Leases;
 - (viii) the Vendor's Intellectual Property used by the Vendor in connection with the SS Business;
 - (ix) the Books and Records pertaining exclusively to the SS Business; and
 - (x) any goodwill of the SS Business as at the Closing Date and the exclusive right of the Purchaser to represent itself as carrying on the SS Business as successor to the Vendor.

- (b) The following assets, property and undertaking of the PPCP Business (collectively, the **“PPCP Purchased Assets”**):
 - (i) the Equipment used by the Vendor in the PPCP Business;
 - (ii) the Customer Contracts pertaining exclusively to the PPCP Business;
 - (iii) the Operating Contracts pertaining exclusively to the PPCP Business;
 - (iv) the Inventories pertaining exclusively to the PPCP Business;
 - (v) the Vendor’s Intellectual Property used by the Vendor in connection with the PPCP Business;
 - (vi) the Books and Records pertaining exclusively to the PPCP Business; and
 - (vii) any goodwill of the PPCP Business as at the Closing Date and the exclusive right of the Purchaser to represent itself as carrying on the PPCP Business as successor to the Vendor.

3.2 Excluded Assets

Notwithstanding anything to the contrary in Section 3.1 or elsewhere in this Agreement, the Purchased Assets shall not include any of the following assets, property and undertaking (the **“Excluded Assets”**), which shall not form part of the purchase and sale contemplated hereunder and shall remain the property of the Vendor after Closing:

- (a) cash on hand or on deposit with banks or other depositories;
- (b) the Accounts Receivable;
- (c) the Prepaid Expenses;
- (d) term or time deposits, guaranteed investment certificates, treasury bills and other marketable securities;
- (e) debts due to the Vendor from any shareholder, director, officer or employee of any such Vendor or any other person who does not deal at arm’s length with such Vendor;
- (f) all debts due to the Vendor and any claims, suits or rights of action of any nature whatsoever of the Vendor by or against any person with respect to the Vault Cash Program including all debts due to the Vendor and all of the Vendor’s claims, suits or rights of action pursuant to the Customer Contracts and Operating Contracts pertaining to the Vault Cash Program;
- (g) any claims, suits or rights of action of the Vendor against Blair Gagnon and his heirs, executors and administrators;

- (h) the interest of any of the Vendor in any insurance policies, including the cash surrender value thereof;
- (i) refundable Taxes previously paid by any of the Vendor and any claim or right of any such Vendor to any refund of Taxes, together with any interest thereon;
- (j) the corporate and Tax records of the Vendor; and
- (k) the property and assets listed in Schedule 8 attached hereto.

3.3 Assumption of Liabilities

The Purchaser shall assume and shall pay, discharge and perform all liabilities and obligations to be paid, discharged or performed by the Vendor on and after the Closing Date listed in Schedule 11 attached hereto (collectively, the “**Assumed Liabilities**”) to the extent that such liabilities and obligations arise or are incurred on or after the Closing Date; but the Purchaser shall not be liable for, or assume, any other liabilities, debts or obligations of the Vendor, whether present or future, absolute or contingent.

3.4 As Is, Where Is

Except as otherwise set out herein, the Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date. The Purchaser further acknowledges that it will conduct such inspections of the condition of and title to the Purchased Assets as it deems appropriate and that it will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied pursuant to this Agreement, any schedule to this Agreement (including any list of any Purchased Assets) or otherwise as to title, encumbrances, description, fitness for purpose, merchantability, condition, assignability, collectability, quantity, outstanding amount, value or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same, save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in any other jurisdiction shall not apply hereto and shall be deemed to have been waived by the Purchaser.

3.5 Assignment of Customer Contracts, Operating Contracts, Equipment Operating Leases and Real Property Leases

- (a) The Vendor agrees to use its reasonable commercial efforts to obtain, as may be required by the terms of the Customer Contracts, the Operating Contracts, the Equipment Operating Leases or the Real Property Leases (collectively the “**Assigned Contracts**”), consents or approvals to the assignment of such Assigned Contracts, Equipment requested by the Purchaser acting reasonably, on terms and conditions satisfactory to the Purchaser acting reasonably. Except for any administration fee required to be paid to the person whose consent or approval has been requested in respect of any such Assigned Contract, the Vendor shall not be required to pay any amount or fee whatsoever in connection with the Vendor’s covenant to attempt to obtain such consent or approval. The Purchaser agrees to supply all such information to the Vendor and the person whose consent or

approval has been requested (including, without limitation, credit and financial information) as may be reasonably requested by the Vendor or the person whose consent or approval has been requested and to otherwise cooperate, acting reasonably, with the Vendor and the person whose consent or approval has been requested in connection with the foregoing. Notwithstanding any other provision of this Agreement, the failure of the Vendor or the Purchaser to have obtained any such consents or approvals requested by the Purchaser, except in respect of any Required Consents, shall not entitle the Purchaser to terminate this Agreement or reduce the Purchase Price and shall not operate to release the Purchaser from any of its obligations hereunder.

- (b) To the extent the assignment of any of the Assigned Contracts assigned to the Purchaser pursuant to the provisions hereof shall require the consent or approval of any person and such consent or approval is not obtained at or prior to the Time of Closing, this Agreement shall not constitute a contract to assign such Assigned Contract if an attempted assignment would constitute a breach thereof. The Vendor shall co-operate with the Purchaser in any reasonable arrangement designed to provide the Purchaser with the benefit of such Assigned Contract including enforcement of any and all rights of the Vendor (if any) against the other party thereto arising out of any breach or cancellation thereof by such party or otherwise. Nothing contained herein shall be construed to negate or diminish, as between the Vendor and the Purchaser, the Vendor's covenants and obligations to transfer and deliver to the Purchaser the Purchased Assets as provided in this Agreement.

3.6 Transition

[Depending on how the Purchaser intends to take over the operation of the Businesses on the Closing Date, it may be necessary to provide for a period after Closing during which the Vendor will need to continue to service the purchased Customer Contracts on behalf of the Purchaser and in which case CU-Connect should be paid a transition services fee in exchange for providing transition services pursuant to a transition services agreement to be entered into on the Closing Date]

ARTICLE 4 PURCHASE PRICE

4.1 Purchase Price

The purchase price for the Purchased Assets shall be the sum of \$_____ in respect of the SS Purchased Assets (the "**SS Purchase Price**") and the sum of \$_____ in respect of the PPCP Purchased Assets (the "**PPCP Purchase Price**"). The amount of the Purchase Price shall not be subject to adjustment except as may be otherwise specifically provided in this Agreement.

4.2 Payment of Purchase Price

The Purchaser shall pay the Purchase Price to the Vendor as follows:

- (a) as to the sum of \$_____ (the “**Deposit**”) (being 10% of the Purchase Price), as a deposit in respect of the Purchase Price; the receipt of which is hereby acknowledged by the Vendor and which Deposit shall be held in segregated interest-bearing trust account and applied against the Purchase Price, forfeited or released to the Purchaser, as the case may be, all in accordance with Section 4.3; and
- (b) as to the balance of the Purchase Price payable to the Vendor on Closing, by certified cheque, bank draft or wire transfer of immediately available funds to an account specified by the Vendor.

4.3 Deposit

The Deposit (and any accrued interest thereon) shall be credited against the Purchase Price due on Closing. If the transactions contemplated herein are not completed as a result of any of the conditions set out in Section 7.1 not being satisfied, then the Deposit (and any accrued interest thereon) shall be returned to the Purchaser. If the transactions contemplated herein are not completed for any other reason, then the Deposit (and any accrued interest thereon) shall be forfeited by the Purchaser and the Vendor shall be entitled to the same.

4.4 Allocation of Purchase Price

The Vendor and the Purchaser hereby agree to allocate the Purchase Price among the Vendor and the Purchased Assets in accordance with Schedule 9 attached hereto. The Vendor and the Purchaser shall report the sale and purchase of the Purchased Assets for all Tax purposes in mutually agreeable form and in a manner consistent with such allocation.

4.5 Transfer Taxes

The parties agree that:

- (a) the Purchaser shall be liable for and shall pay any and all Transfer Taxes and shall indemnify or reimburse the Vendor for any amounts for which the Vendor may become liable as a result of any failure by the Purchaser to pay any Transfer Taxes. At Closing, the Purchaser will, as applicable, either pay the foregoing to the Vendor or deliver to the Vendor evidence confirming the Purchaser’s payment of all of the foregoing, in form and substance satisfactory to the Vendor, acting reasonably. The Purchaser shall be entitled to provide the Vendor with evidence that the Purchaser is an exempt Purchaser, in whole or in part, for purposes of relevant legislation and, upon provision of such evidence satisfactory to the Vendor, acting reasonably, the Purchaser shall not be required to pay on Closing such taxes; and

- (b) without limiting the Purchaser's indemnity obligations under Section 4.5(a), if legally permitted under the *Excise Tax Act* (Canada) the Vendor and the Purchaser shall jointly elect on Closing under Section 167 of Part IX of the *Excise Tax Act* (Canada) that no GST be payable with respect to the sale and purchase of the Purchased Assets. Such election shall be made in prescribed form pursuant to the said Act, and the Purchaser shall file the joint election in accordance with the said Act.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Vendor's Representations

The Vendor hereby represents and warrants to the Purchaser that:

- (a) the Vendor is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation or amalgamation, as the case may be;
- (b) subject to the issuance of the Approval Order and the Vesting Order, the Vendor has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder; and
- (c) the Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

5.2 Purchaser's Representations

The Purchaser hereby represents and warrants to and in favour of the Vendor that:

- (a) the Purchaser is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions herein contemplated hereunder;
- (b) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement; and
- (c) the Purchaser is [*not*] a non-Canadian person within the meaning of the Investment Canada Act.

ARTICLE 6 COVENANTS

6.1 Regulatory Matters

Each of the parties, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all Applicable Laws, as may be required for it to consummate the purchase and sale of the Purchased Assets in accordance with the terms of this Agreement, including in connection with the Required Consents. The parties

will coordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing, including providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which any party, acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority.

6.2 Approval Order and Vesting Order

The Vendor shall promptly seek to obtain from the CCAA Court a date for hearing of an application for the Approval Order (i) approving the sale by the Vendor to the Purchaser of the Purchased Assets in accordance with the provisions of this Agreement, and (ii) providing for the issuance of a Vesting Order which on Closing vests absolute, clear and unencumbered title to the Purchased Assets in the Purchaser. Such date shall be as soon as practicable after the execution and delivery of this Agreement. The Vendor shall prepare all materials for and shall apply to the CCAA Court for, and use its best efforts to obtain, such Approval Order and Vesting Order. The materials for the CCAA Court filed by the Vendor shall be in form and substance satisfactory to the Purchaser, acting reasonably. Written notification of the application shall be given to such parties as shall be agreed upon by the Vendor and the Purchaser. The Vendor shall diligently pursue such application and shall promptly notify the Purchaser of its disposition. The Purchaser, at its own expense, shall promptly provide to the Vendor, all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Approval Order and the Vesting Order, including such information as may be required to reasonably evaluate the Purchaser's financial ability to perform its obligations hereunder.

6.3 Maintenance of Books and Records; Access after Closing

The Purchaser shall use its commercially reasonable efforts to retain all of the Books and Records delivered to it by the Vendor hereunder and relating to any period ending on or prior to the Closing Date for a period of six (6) years following the Closing Date. At any time during such six-year period, each of the Vendor and its Representatives shall have reasonable access thereto in connection with the affairs of the Vendor but the Purchaser shall not be responsible or liable to any of the Vendor for or as a result of any unintentional loss or destruction of or damage to any of the Books and Records.

ARTICLE 7 CONDITIONS

7.1 Conditions of the Purchaser

The obligation of the Purchaser to complete the transactions contemplated hereunder is subject to the following conditions being fulfilled, or performed, at or prior to the Time of Closing:

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects as at the Time of Closing with the same force and effect as if made at and as of such time, and each of the Vendor shall have delivered to the Purchaser a certificate to that effect (provided that

acceptance of such evidence and completion of the transactions contemplated hereunder shall not be a waiver of such representations and warranties);

- (b) the Vendor shall have complied with and performed all of its covenants and obligations contained in this Agreement;
- (c) all Required Consents shall have been obtained;
- (d) the Vendor shall have delivered to the Purchaser the items referred to in Section 8.2;
- (e) the Vendor shall have applied for and the CCAA Court shall have granted the Approval Order and the Vesting Order, each in accordance with Section 6.2 above;
- (f) no injunction or other Order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement; and
- (g) no material adverse change shall have occurred with respect to the Purchased Assets, taken as a whole, during the period from the date of this Agreement to the Time of Closing.

The foregoing conditions are for the exclusive benefit of the Purchaser and, subject to Section 2.1, any condition may be waived by it in whole or in part. Any such waiver is only binding on the Purchaser if it is made in writing.

7.2 Conditions of the Vendor

The obligation of each of the Vendor to complete the transactions contemplated hereunder is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true and correct and the Purchaser shall have delivered to the Vendor a certificate to that effect (provided that acceptance of such evidence and the completion of the transactions contemplated hereunder shall not be a waiver of such representations and warranties);
- (b) the Purchaser shall have complied with and performed all of its covenants and obligations contained in this Agreement;
- (c) all Required Consents shall have been obtained;
- (d) the Purchaser shall have delivered to the Vendor the items referred to in Section 8.3;
- (e) the Vendor shall have obtained the Approval Order and the Vesting Order, each in accordance with Section 6.2 above; and

- (f) *[the Purchaser shall have delivered to the Vendor the Transition Plan and shall have entered into the Transition Services Agreement with the Vendor in form and substance satisfactory to the Vendor].*

The foregoing conditions are for the exclusive benefit of the Vendor and, subject to Section 2.1, any condition may be waived by them in whole or in part. Any such waiver is only binding on the Vendor if it is made in writing.

7.3 Non-Satisfaction of Conditions

Subject to Section 2.1, if any condition set out in Section 7.1 or Section 7.2 is not satisfied or performed prior to the time specified therefor, the party for whose benefit the condition is inserted may:

- (a) in writing, waive compliance with the condition in whole or in part in its sole discretion by notice to the other parties and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect to terminate this Agreement, in which case no party shall be under any further obligation to the others to complete the transactions of purchase and sale contemplated by this Agreement.

7.4 Effect of Termination

If the Purchaser validly terminates this Agreement in accordance with Section 7.3(b) then:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end;
- (b) the Purchaser shall be entitled to have the Deposit returned with any interest accrued therein but without deduction; and
- (c) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

7.5 Breach by Purchaser

If the Purchaser fails to complete the transactions contemplated by this Agreement in accordance with the terms of this Agreement, other than as the result of a termination in accordance with Section 7.4, then the Vendor may by notice to the Purchaser elect to treat the Agreement as having been repudiated by the Purchaser. In that event, the Deposit and any other payments made by the Purchaser shall be forfeited to the Vendor on account of, and in full satisfaction of its liquidated damages, not as a penalty and the Purchased Assets may be resold by the Vendor.

ARTICLE 8 CLOSING

8.1 Closing Date and Place of Closing

The transactions contemplated by this Agreement shall close and be completed on the Closing Date. The completion of the transactions contemplated hereunder shall take place at the offices of the Vendor's solicitors located at 40 King Street West, Suite 5800, Toronto, Ontario M5H 3S1 or such other location as the parties may agree in writing.

8.2 Deliveries on Closing by the Vendor

The Vendor shall deliver to the Purchaser at the Time of Closing:

- (a) the certificate by each of the Vendor described in Section 7.1(a);
- (b) a CCAA Court-certified or notarial copy of the Approval Order and the Vesting Order;
- (c) a bill of sale conveying the Purchased Assets to the Purchaser, in a form satisfactory to the parties hereto, acting reasonably;
- (d) an assignment agreement in respect of the Customer Contracts, the Operating Contracts, the Equipment Leases and the Real Property Leases, in a form satisfactory to the parties hereto, acting reasonably;
- (e) an assignment and assumption agreement in respect of the Assumed Liabilities, in a form satisfactory to the parties hereto, acting reasonably;
- (f) the Required Consents;
- (g) assignments in registrable form of all trademarks and trade names (whether or not registered), patents, copyrights, and other such forms of intellectual property, including all goodwill associated with same, which form part of the Purchased Assets;
- (h) to the extent available, the originals and, if originals are not available, copies of the Books and Records; and
- (i) such other documents as are required by this Agreement.

8.3 Deliveries on Closing by the Purchaser

The Purchaser shall deliver to the Vendor at the Time of Closing:

- (a) the Purchase Price to be paid in accordance with Section 4.2;
- (b) payment or evidence of payment of all Transfer Taxes in accordance with Section 4.5(a);

- (c) the certificate by the Purchaser referred to in Section 7.2(a);
- (d) the assignment and assumption agreement described in Section 8.2(e); and
- (e) such other documents as are required by this Agreement.

8.4 Risk and Insurance

The risk of loss of the Purchased Assets shall remain with the Vendor until Closing. Any property, liability and other insurance maintained by the Vendor shall not be transferred as of the Closing Date, but shall remain the responsibility of the Vendor until the Closing Time. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after the Closing Time.

8.5 Employees of the Business

The Purchaser shall, on Closing, offer employment to each employee of the Vendor (other than the employees listed in Part 1 of Schedule 12 attached hereto) at the same wage and benefits, and on such other employment terms, as such employee was employed by the Vendor on the date of this Agreement. In furtherance of the foregoing, the Purchaser shall assume on Closing the Vendor's obligations to applicable hired employees pursuant to their respective employment agreements listed in Part 2 of Schedule 12 attached hereto. The Vendor shall use commercially reasonable efforts and actively cooperate with the Purchaser in its efforts to employ such employees and shall provide all relevant information about the terms of employment of the employees as the Purchaser may reasonably request provided that the Vendor shall not incur any financial costs in respect thereof. The Purchaser shall become a successor employer in respect of all such employees hired by the Purchaser and shall pay to such employees when due, all amounts payable to them on and after the Closing Date whether such amounts accrued before, on or after the Closing Date.

8.6 Possession

The Purchaser shall be entitled to possession of the Purchased Assets on and after Closing. The Vendor shall deliver to the Purchaser on Closing such keys, lock and safe combinations and other similar items as the Purchaser may require to obtain immediate and full occupation and control of the Purchased Assets.

ARTICLE 9 MISCELLANEOUS

9.1 Confidentiality

If, for any reason, the transactions contemplated by this Agreement are not completed, the Purchaser for itself and on behalf of its Affiliates, directors, officers, employees and agents, hereby agrees to keep confidential and to refrain from using any information concerning the business and affairs of the Vendor which it may have acquired in connection with the transactions contemplated by this Agreement and in addition, shall return all records or documents, including computer tapes and other forms of electronic media received from the

Vendor relating to the Purchased Assets or the Business. The Purchaser's obligations in this respect shall not apply to any information which:

- (a) is in the public domain at the time of its disclosure to the Purchaser;
- (b) subsequently comes into the public domain without breach by the Purchaser or its Representatives of its obligation under this Section 9.1; or
- (c) the Purchaser can show was (A) in its possession prior to its disclosure to the Purchaser in connection with these transactions, or (B) independently developed by or on behalf of the Purchaser.

9.2 Obligations to Survive

Notwithstanding the completion of the transactions contemplated hereunder or the delivery of documents pursuant to this Agreement, the obligations, covenants, representations and warranties of the parties hereto shall survive such completion and shall remain in full force and effect and shall not merge as a result thereof.

9.3 Further Assurances

Each of the parties hereto from and after the Time of Closing shall, from time to time, and at the request and expense of the party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested for more effectually carrying out the true intent and meaning of this Agreement.

9.4 No Assignment by Purchaser

The Purchaser shall not, without the Vendor's prior written consent, assign any right or interest in this Agreement.

9.5 Time of the Essence

Time shall be of the essence of this Agreement.

9.6 Costs and Expenses

Each party hereto shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisors) incurred by it in connection with this Agreement and the transactions contemplated herein.

9.7 Notices

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be given in writing and addressed as follows:

(a) in the case of the Vendor:

MILLER THOMSON LLP
Barristers and Solicitors
40 King Street West, Suite 5800
Toronto ON M5H 3S1

Attention: Jeffrey C. Carhart/Margaret R. Sims

Fax: 416.595.8695

Email: jcarhart@millerthomson.com/msims@millerthomson.com

with a copy to the Vendor's chief restructuring officer at:

10 Milner Business Court, Ste. 811
Toronto ON M1B 3C6

Attention: Terry Chapman

Fax: 416.335.8141

Email: terry@cu-connect.com

and with a further copy to counsel for the Monitor, KPMG Inc.:

BORDEN LADNER GERVAIS LLP
40 King Street West
Suite 4100
Toronto, ON M5H 3Y4

Attention: [Roger Jaipargas](#)

Facsimile No.: 416.367.6749

(b) In the case of the Purchaser:

Attention: _____

Facsimile No.: _____

with a copy to:

Attention: _____

Facsimile No.: _____

Any such notice shall be deemed to be sufficiently given if personally delivered or sent by facsimile transmission, and in each case shall be deemed to have been received by the other party on the same day on which it was delivered or sent by facsimile transmission, if such day is a Business Day, and, if not, on the next following Business Day.

9.8 Successors and Assigns

This Agreement shall be binding upon, and enure to the benefit of, the parties hereto and their respective successors and permitted assigns.

9.9 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document and all counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

9.10 No Brokers

It is understood and agreed that no broker, agent or other intermediary has acted for the Vendor in connection with the sale of the Purchased Assets and the Purchaser shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Vendor.

9.11 Third Party Beneficiaries

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

9.12 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision validity or enforceability in any other jurisdiction.

9.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first written above.

**3791351 Canada Inc. CARRYING ON
BUSINESS AS “CU-CONNECT”**

Per: _____
Name: Terry Chapman
Title: Chief Restructuring Officer
I/We have the authority to bind the corporation

PURCHASER

Per: _____
Name:
Title:

Per: _____
Name:
Title:
I/We have the authority to bind the corporation

SCHEDULE 1

Customer Contracts

SS Business



PPCP Business



SCHEDULE 2

Contracts

SS Business



PPCP Business



SCHEDULE 3

Equipment Operating Leases



SCHEDULE 4

Leases and Leased Premises

SCHEDULE 5

Equipment

SS Business



PPCP Business



SCHEDULE 6

Vendor's Intellectual Property

SS Business



PPCP Business



SCHEDULE 7

Required Consents

SS Business



PPCP Business



SCHEDULE 8

Excluded Assets

SCHEDULE 9

**Allocation of Purchase Price
(prior to any Adjustments made pursuant to ____)**

Purchased Assets	CU-Connect
Equipment	
Contracts	
Accounts Receivable	
Inventories	
Leases	
Leasehold Improvements	
Equipment Operating Leases	
Vendor's Intellectual Property	
Prepaid Expenses	
Books and Records	
Goodwill	

SCHEDULE 10

Location of Offices and Purchased Assets

1. 10 Milner Business Court
Suite 811
Toronto, Ontario
M1B 3C6

SCHEDULE 11

List of Assumed Liabilities

Liabilities and obligations of the Vendor under the:

1. Customer Contracts;
2. Operating Contracts;
3. Real Property Leases;
4. Equipment Operating Leases.

SCHEDULE 12

Part 1

List of Excluded Employees

Part 2

List of Employment Contracts to be Assumed by the Purchaser

Employment Agreements

1. Offer of employment dated _____ between CU-Connect and _____

2.