

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**Form 10-K**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934. For the fiscal year ended December 31, 2011

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934. For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-21513

**DXP Enterprises, Inc.**

(Exact name of registrant as specified in its charter)

Texas

(State or other jurisdiction of incorporation or organization)

76-0509661

(I.R.S. Employer Identification Number)

7272 Pinemont, Houston, Texas

(Address of principal executive offices)

77040

(Zip Code)

(713) 996-4700

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: **None**

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, \$0.01 Par Value

(Title of Class)

NASDAQ

(Name of exchange on which registered)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. (See definitions of "large accelerated filer", "accelerated filer", and "smaller reporting company" in Rule 12b-2 of the Exchange Act).

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Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting  
company)

Accelerated filer

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

Aggregate market value of the registrant's Common Stock held by non-affiliates of registrant as of June 30, 2011: \$245,207,990

Number of shares of registrant's Common Stock outstanding as of March 5, 2012: 14,130,220.

Documents incorporated by reference: Portions of the definitive proxy statement for the annual meeting of shareholders to be held in 2012 are incorporated by reference into Part III hereof.

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**DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

This Annual Report on Form 10-K contains statements that constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements can be identified by the use of forward-looking terminology such as “believes”, “expects”, “may”, “estimates”, “will”, “should”, “plans” or “anticipates” or the negative thereof or other variations thereon or comparable terminology, or by discussions of strategy. Any such forward-looking statements are not guarantees of future performance and involve significant risks and uncertainties, and actual results may vary materially from those discussed in the forward-looking statements as a result of various factors. These factors include the effectiveness of management’s strategies and decisions, our ability to affect our internal growth strategy, general economic and business conditions, developments in technology, our ability to effectively integrate businesses we may acquire, new or modified statutory or regulatory requirements and changing prices and market conditions. This report identifies other factors that could cause such differences. We cannot assure you that these are all of the factors that could cause actual results to vary materially from the forward-looking statements. We assume no obligation and do not intend to update these forward-looking statements.

## PART I

*This Annual Report on Form 10-K (this "Report") contains, in addition to historical information, "forward-looking statements" that involve risks and uncertainties. DXP Enterprises, Inc.'s actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in "Risk Factors", and elsewhere in this Annual Report on Form 10-K. Unless the context otherwise requires, references in this Report to the "Company", "DXP", "we" or "our" shall mean DXP Enterprises, Inc., a Texas corporation, together with its subsidiaries.*

### ITEM 1. *Business*

#### **Company Overview**

DXP was incorporated in Texas in 1996 to be the successor to a company founded in 1908. Since our predecessor company was founded, we have primarily been engaged in the business of distributing maintenance, repair and operating ("MRO") products, equipment and service to industrial customers. We are organized into three segments: Service Centers, Innovative Pumping Solutions and Supply Chain Services. Sales and operating income for 2009, 2010 and 2011, and identifiable assets at the close of such years for our business segments are presented in Note 14 of the Notes to the Consolidated Financial Statements.

Our total sales have increased from \$125 million in 1996 to \$807 million in 2011 through a combination of internal growth and acquisitions. At December 31, 2011 we operated from 123 locations in 34 states in the U.S. and Sonora, Mexico serving more than 50,000 customers engaged in a variety of industrial end markets. We have grown sales and profitability through a combination of additional locations, products, services and becoming customer driven experts in maintenance, repair and operating solutions.

Our principal executive office is located at 7272 Pinemont Houston, Texas 77040, and our telephone number is (713) 996-4700. Our website address on the Internet is [www.dxpe.com](http://www.dxpe.com) and emails may be sent to [info@dxpe.com](mailto:info@dxpe.com). The reference to our website address does not constitute incorporation by reference of the information contained on the website and such information should not be considered part of this report.

#### **Industry Overview**

The industrial distribution market is highly fragmented. Based on 2010 sales as reported by Industrial Distribution magazine, we were the 16th largest distributor of MRO products in the United States. Most industrial customers currently purchase their industrial supplies through numerous local distribution and supply companies. These distributors generally provide the customer with repair and maintenance services, technical support and application expertise with respect to one product category. Products typically are purchased by the distributor for resale directly from the manufacturer and warehoused at distribution facilities of the distributor until sold to the customer. The customer also typically will purchase an amount of product inventory for its near term anticipated needs and store those products at its industrial site until the products are used.

We believe that the distribution system for industrial products in the United States, described in the preceding paragraph, creates inefficiencies at both the customer and the distributor levels through excess inventory requirements and duplicative cost structures. To compete more effectively, our customers and other users of MRO products are seeking ways to enhance efficiencies and lower MRO product and procurement costs. In response to this customer desire, three primary trends have emerged in the industrial supply industry:

- *Industry Consolidation.* Industrial customers have reduced the number of supplier relationships they maintain to lower total purchasing costs, improve inventory management, assure consistently high levels of customer service and enhance purchasing power. This focus on fewer suppliers has led to consolidation within the fragmented industrial distribution industry.

- *Customized Integrated Service.* As industrial customers focus on their core manufacturing or other production competencies, they increasingly are demanding customized integration services, consisting of value-added traditional distribution, supply chain services, modular equipment and repair and maintenance services.
- *Single Source, First-Tier Distribution.* As industrial customers continue to address cost containment, there is a trend toward reducing the number of suppliers and eliminating multiple tiers of distribution. Therefore, to lower overall costs to the customer, some MRO distributors are expanding their product coverage to eliminate second-tier distributors and become a “one stop source”.

We believe we have increased our competitive advantage through our traditional and integrated supply programs, which are designed to address the customer's specific product and procurement needs. We offer our customers various options for the integration of their supply needs, ranging from serving as a single source of supply for all or specific lines of products and product categories to offering a fully integrated supply package in which we assume the procurement and management functions, including ownership of inventory, at the customer's location. Our approach to integrated supply allows us to design a program that best fits the needs of the customer. Customers purchasing large quantities of product are able to outsource all or most of those needs to us. For customers with smaller supply needs, we are able to combine our traditional distribution capabilities with our broad product categories and advanced ordering systems to allow the customer to engage in one-stop sourcing without the commitment required under an integrated supply contract.

## **Business Segments**

DXP is organized under three business segments: Service Centers, Innovative Pumping Solutions (“IPS”) and Supply Chain Services (“SCS”). Our segments provide management with a comprehensive financial view of our key businesses. The segments enable the alignment of strategies and objectives and they provide a framework for timely and rational allocation of resources within our businesses.

### **Service Centers Segment**

The Service Centers provide MRO products, equipment and services, including technical design expertise and logistics capabilities, to industrial customers with the ability to provide same day delivery. We offer our customers a single source of supply on an efficient and competitive basis by being a first-tier distributor that can purchase products directly from the manufacturer. As a first-tier distributor, we are able to reduce our customers' costs and improve efficiencies in the supply chain. We also provide services such as field safety supervision, in-house and field repair and predictive maintenance. We offer a wide range of industrial MRO products, equipment and services through a complete continuum of customized and efficient MRO solutions.

DXP Service Centers are stocked and staffed with knowledgeable sales associates and backed by a centralized customer service team of experienced industry professionals. Our Service Centers' products and services are distributed from 123 service centers and 7 distribution centers.

DXP Service Centers provide a wide range of MRO products in the rotating equipment, bearing, power transmission, hose, fluid power, metal working, industrial supply and safety product categories. We currently serve as a first-tier distributor of more than 1,000,000 items of which more than 60,000 are stock keeping units (“SKUs”) for use primarily by customers engaged in the oil and gas, food and beverage, petrochemical, transportation and other general industrial industries. Other industries served by our Service Centers include mining, construction, chemical, municipal, agriculture and pulp and paper.

Virtually all of the segment's long-lived assets are located in the U.S. and virtually all sales are recognized in the U.S.

At December 31, 2011, the Service Centers segment had approximately 1,295 full-time employees.

## Supply Chain Services Segment

DXP's Supply Chain Services segment manages the supply-chain of its customers from across a variety of industries. Our mission is to help our customers become more competitive by reducing their indirect material costs and order cycle time by increasing productivity and by creating enterprise-wide inventory and procurement visibility and control.

DXP has developed assessment tools and master plan templates aimed at taking cost out of supply chain processes, streamlining operations and boosting productivity. This multi-faceted approach allows us to manage the entire channel for maximum efficiency and optimal control, which ultimately provides our customers with a low-cost solution.

DXP takes a consultative approach to determine the strengths and opportunities for improvement within a customer's indirect supply chain. This assessment determines if and how we can best streamline operations, drive value within the procurement process, and increase control in storeroom management.

Decades of supply chain inventory management experience and comprehensive research, as well as a thorough understanding of our customer's business and industry have allowed us to design standardized programs that are flexible enough to be fully adaptable to address our customers' unique supply chain challenges. These standardized programs include:

- SmartAgreement, a planned, pro-active procurement solution for MRO categories serviced by local DXP Service Centers.
- SmartBuy, DXP's on-site or centralized MRO procurement solution.
- SmartSource<sup>SM</sup>, DXP's on-site procurement and storeroom management by DXP personnel.
- SmartStore, DXP's customized e-Catalog solution.
- SmartVend, DXP's industrial dispensing solution. It allows for inventory-level optimization, user accountability and item usage reduction by 20-40% and
- SmartServ, DXP's integrated service pump solution. It provides a more efficient way to manage the entire life cycle of pumping systems and rotating equipment.

DXP's SmartSolutions programs help customers to cut product costs, improve supply chain efficiencies and obtain expert technical support. DXP represents manufacturers of up to 90% of all the maintenance, repair and operating products of our customers. Unlike many other distributors who buy products from second-tier sources, DXP takes customers to the source of the products they need.

The Supply Chain Services segment operates supply chain installations in 55 of our customers' facilities.

All of the segment's long-lived assets are located in the U. S. and all of 2011 sales were recognized in the U.S.

At December 31, 2011, the Supply Chain Services segment had approximately 276 full-time employees.

## Innovative Pumping Solutions Segment

DXP's Innovative Pumping Solutions® segment provides fabrication and technical design to meet the capital equipment needs of our global customer base.

DXP's engineering staff can design a complete custom pump package to meet the customers' project specifications. Drafting programs such as Solidworks and AutoCAD allow our engineering team to verify the design and layout of packages with our customers prior to the start of fabrication. FEA programs such as Cosmos Professional are used to design the package to meet all normal and future loads and forces. This process helps maximize the pump packages' life and minimizes any impact to the environment.

With over 100 years of fabrication experience, DXP has acquired the technical expertise to ensure that our pumps and pump packages are built to meet the highest standards. DXP utilizes manufacturer authorized equipment and certified personnel. Pump packages require MRO and OEM equipment such as pumps, motors, valves, and consumable products, such as welding supplies. DXP leverages its MRO inventories and breadth of authorized products to lower the total cost and maintain the quality of the pump package.

DXP's fabrication facilities provide convenient technical support and pump services. They have been designed with state of the art equipment to provide the technical services our customers require:

- Certified structural welding
- Certified pipe welding
- Custom skid assembly
- Custom coatings
- Hydrostatic pressure testing
- Mechanical string testing
- ABS/DNV certification

Examples of our innovative pump packages include:

- Diesel and electric driven firewater
- Pipeline booster
- Potable water packages
- Pigging pump packages
- LACT charge units
- Chemical injection pump packages wash down units
- Seawater lift pumps
- Jockey pumps
- Condensate pump packages
- Cooling water skids
- Seawater/produced water injection packages
- Variety of packages to meet API, ANSI and NFPA 20 specifications

The Innovative Pumping Solutions segment operates out of 8 facilities located in Texas, Arizona, Louisiana, Colorado and Nebraska.

All of the segment's long-lived assets are located in the U. S. and virtually all sales are recognized in the U.S.

At December 31, 2011, the Innovative Pumping Solutions segment had approximately 230 full-time employees.

## **Products**

Most industrial customers currently purchase their MRO supplies through local or national distribution companies that are focused on single or unique product categories. As a first-tier distributor, our network of service and distribution centers stock more than 60,000 stock keeping units and provide customers with access to more than 1,000,000 items. Given our breadth of product and the industrial distribution customers focus around key products categories such as bearings & power transmission, fluid handling and power, safety, metal working and industrial supplies, we have become customer driven experts in five key product categories. As such, our three business segments are supported by five key product categories including, rotating equipment, bearings & power transmission, industrial supplies, metal working and safety products & services. Each business segment tailors its inventory and leverages product experts to meet the needs of its local customers.

Key product categories that we offer include:

- **Rotating Equipment** . Our rotating equipment products include a full line of centrifugal pumps for transfer and process service applications, such as petrochemicals, refining and crude oil production; rotary gear pumps for low- to medium pressure service applications, such as pumping lubricating oils and other viscous liquids; plunger and piston pumps for high-pressure service applications such as salt water injection and crude oil pipeline service; and air-operated diaphragm pumps. We also provide various pump accessories.
- **Bearings & Power Transmission** . Our bearing products include several types of mounted and unmounted bearings for a variety of applications. The power transmission products we distribute include speed reducers, flexible-coupling drives, chain drives, sprockets, gears, conveyors, clutches, brakes and hoses.
- **Industrial Supplies** . We offer a broad range of industrial supplies, such as abrasives, tapes and adhesive products, coatings and lubricants, fasteners, hand tools, janitorial products, pneumatic tools, welding supplies and welding equipment.
- **Metal Working** . Our metal working products include a broad range of cutting tools, abrasives, coolants, gauges, industrial tools and machine shop supplies.
- **Safety Products & Services** . We provide safety services including safety supervision, training, monitoring, equipment rental and consulting. Our safety products and services include safety supervision, medic services, safety audits, instrument repair and calibration, training, monitoring, equipment rental and consulting. Additionally, we sell safety products including eye and face protection, first aid, hand protection, hazardous material handling, instrumentation and respiratory protection products.

We acquire our products through numerous original equipment manufacturers, or OEMs. We are authorized to distribute certain manufacturers' products in only specific geographic areas. All of our distribution authorizations are subject to cancellation by the manufacturer upon one-year notice or less. For the last three fiscal years, no manufacturer provided products that accounted for 10% or more of our revenues. We believe that alternative sources of supply could be obtained in a timely manner if any distribution authorization were canceled. Accordingly, we do not believe that the loss of any one distribution authorization would have a material adverse effect on our business, financial condition or results of operations.

## Recent Acquisitions

A key component of our growth strategy includes effecting acquisitions of businesses with complementary or desirable product lines, locations or customers. Since 2004, we have completed 17 acquisitions across our three business segments. Below is a summary of recent acquisitions since the end of 2006.

On May 4, 2007, DXP completed the acquisition of the business of Delta Process Equipment. DXP paid \$10 million in cash for this business. DXP acquired this business to diversify DXP's customer base in the municipal, wastewater and downstream industrial pump markets. The purchase price was funded by utilizing available capacity under DXP's credit facility.

On September 10, 2007, DXP completed the acquisition of Precision Industries, Inc. DXP acquired this business to expand DXP's geographic presence and strengthen DXP's integrated supply offering. The Company paid \$106 million in cash for Precision Industries, Inc. The purchase price was funded using approximately \$24 million of cash on hand and approximately \$82 million borrowed from a new credit facility.

On October 19, 2007, DXP completed the acquisition of the business of Indian Fire & Safety. DXP acquired this business to strengthen DXP's expertise in safety products and services in New Mexico and Texas. DXP paid \$6.0 million in cash, \$3.0 million in the form of a promissory note and \$2.0 million in future payments which were contingent upon future earnings.



On January 31, 2008, DXP completed the acquisition of the business of Rocky Mtn. Supply. DXP acquired this business to expand DXP's presence in the Colorado area. DXP paid \$3.9 million in cash and \$0.7 million in seller notes.

On August 28, 2008, DXP completed the acquisition of PFI, LLC ("PFI"). DXP acquired this business to strengthen DXP's expertise in the distribution of fasteners. DXP paid \$66.4 million in cash for this business.

On December 1, 2008, DXP completed the acquisition of the business of Falcon Pump. DXP acquired this business to strengthen DXP's pump offering in the Rocky Mountain area. DXP paid \$3.1 million in cash, \$0.8 million in seller notes and \$0.2 million in cash based upon earnings after the acquisition date.

On April 1, 2010, DXP acquired substantially all the assets of Quadna, Inc. ("Quadna"). The purchase price of approximately \$25.0 million (net of \$3.0 million of acquired cash) consisted of \$11 million paid in cash, \$10 million in the form of convertible promissory notes bearing interest at a rate of 10% and approximately \$4.0 million in the form of 343,337 shares of DXP common stock. On April 9, 2010, \$4.5 million principal amount of the convertible promissory notes, along with accrued interest, were converted into 376,417 shares of DXP's common stock. On August 18, 2010, \$3.7 million of the convertible promissory notes were paid off using funds obtained from DXP's credit facility and \$1.8 million of the convertible promissory notes were converted to 117,374 shares of DXP common stock. The \$11 million cash portion of the purchase price was funded by borrowings under DXP's existing credit facility. DXP completed this acquisition to expand its pump business in the Western U.S.

On November 30, 2010, DXP acquired substantially all of the assets of D&F Distributors, Inc. ("D&F"). The purchase price of \$13.4 million consisted of approximately \$7.4 million paid in cash, approximately \$2.9 million in the form of promissory notes bearing interest at a rate of 5%, and approximately \$3.1 million in the form of 155,393 shares of DXP common stock. The cash portion of the purchase price was funded by borrowings under DXP's existing credit facility. DXP completed this acquisition to expand its pump business in Indiana, Kentucky, Tennessee and Ohio.

On October 10, 2011, DXP acquired substantially all of the assets of Kenneth Crosby ("KC"). DXP acquired this business to expand DXP's geographic presence in the eastern U.S. and strengthen DXP's metal working and supply chain services offerings. DXP paid approximately \$16 million for KC, which was borrowed under our existing credit facility.

On December 30, 2011, DXP acquired substantially all of the assets of C.W. Rod Tool Company ("CW Rod"). DXP acquired this business to strengthen DXP's metal working offering in Texas and Louisiana. DXP paid approximately \$1.1 million of DXP's common stock (35,714 shares) and approximately \$42 million in cash for CW Rod, which was borrowed during 2011 and 2012 under our recently expanded credit facility.

## **Competition**

Our business is highly competitive. In the Service Centers segment we compete with a variety of industrial supply distributors, many of which may have greater financial and other resources than we do. Many of our competitors are small enterprises selling to customers in a limited geographic area. We also compete with catalog distributors, large warehouse stores and, to a lesser extent, manufacturers. While many of our competitors offer traditional distribution of some of the product groupings that we offer, we are not aware of any major competitor that offers on a non-catalog basis a range of products and services as broad as our offering. Further, while certain catalog distributors provide product offerings as broad as ours, these competitors do not offer the product application, technical design and after-the-sale services that we provide. In the Supply Chain Services segment we compete with larger distributors that provide integrated supply programs and outsourcing services, some of which might be able to supply their products in a more efficient and cost-effective manner than we can provide. In the Innovative Pumping Solutions segment we compete against a variety of manufacturers, distributors and fabricators, many of which may have greater financial and other resources than we do. We generally compete on service and price in all of our segments.

## **Insurance**

We maintain liability and other insurance that we believe to be customary and generally consistent with industry practice. We retain a portion of the risk for medical claims, general liability, worker's compensation and property losses. The various deductibles of our insurance policies generally do not exceed \$200,000 per occurrence. There are also certain risks for which we do not maintain insurance. There can be no assurance that such insurance will be adequate for the risks involved, that coverage limits will not be exceeded or that such insurance will apply to all liabilities. The occurrence of an adverse claim in excess of the coverage limits that we maintain could have a material adverse effect on our financial condition and results of operations. The premiums for insurance have increased significantly over the past three years. This trend could continue. Additionally, we are partially self-insured for our group health plan, worker's compensation, auto liability and general liability insurance. The cost of claims for the group health plan has increased over the past three years. This trend is expected to continue.

## **Government Regulation and Environmental Matters**

We are subject to various laws and regulations relating to our business and operations, and various health and safety regulations as established by the Occupational Safety and Health Administration.

Certain of our operations are subject to federal, state and local laws and regulations controlling the discharge of materials into or otherwise relating to the protection of the environment. Although we believe that we have adequate procedures to comply with applicable discharge and other environmental laws, the risks of accidental contamination or injury from the discharge of controlled or hazardous materials and chemicals cannot be eliminated completely. In the event of such a discharge, we could be held liable for any damages that result, and any such liability could have a material adverse effect on us. We are not currently aware of any situation or condition that we believe is likely to have a material adverse effect on our results of operations or financial condition.

## **Employees**

At December 31, 2011, DXP had approximately 2,093 full-time employees. We believe that our relationship with our employees is good.

### *Available Information*

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as amended (the "Exchange Act"), are available free of charge through our Internet website ( [www.dxpe.com](http://www.dxpe.com) ) as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission.

## **ITEM 1A. Risk Factors**

The following is a discussion of significant risk factors relevant to DXP's business that could adversely affect its business, financial condition or results of operations.

*The trading price of our common stock may be volatile.*

The market price of our common stock could be subject to wide fluctuations in response to, among other things, the risk factors described in this and other periodic reports, and other factors beyond our control, such as fluctuations in the valuation of companies perceived by investors to be comparable to us. Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political, and market conditions, such as recessions, interest rate changes or international currency fluctuations, may negatively affect the market price of our common stock. In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

*Our future results will be impacted by our ability to implement our internal growth strategy.*

Our future results will depend in part on our success in implementing our internal growth strategy, which includes expanding our existing geographic areas, selling additional products to existing customers and adding new customers. Our ability to implement this strategy will depend on our success in selling more products and services to existing customers, acquiring new customers, hiring qualified sales persons, and marketing integrated forms of supply management such as those being pursued by us through our SmartSource<sup>SM</sup> program. Although we intend to increase sales and product offerings to existing customers, there can be no assurance that we will be successful in these efforts.

*Risks Associated With Acquisition Strategy*

Our future results will depend in part on our ability to successfully implement our acquisition strategy. We may not be able to consummate acquisitions at rates similar to the past, which could adversely impact our growth rate and our stock price. This strategy includes taking advantage of a consolidation trend in the industry and effecting acquisitions of businesses with complementary or desirable product lines, strategic distribution locations, attractive customer bases or manufacturer relationships. Promising acquisitions are difficult to identify and complete for a number of reasons, including high valuations, competition among prospective buyers, the need for regulatory (including antitrust) approvals and the availability of affordable funding in the capital markets. In addition, competition for acquisitions in our business areas is significant and may result in higher purchase prices. Changes in accounting or regulatory requirements or instability in the credit markets could also adversely impact our ability to consummate acquisitions. In addition, acquisitions involve a number of special risks, including possible adverse effects on our operating results, diversion of management's attention, failure to retain key personnel of the acquired business, risks associated with unanticipated events or liabilities, and expenses associated with obsolete inventory of an acquired business, some or all of which could have a material adverse effect on our business, financial condition and results of operations. Our ability to grow at or above our historic rates depends in part upon our ability to identify and successfully acquire and integrate companies and businesses at appropriate prices and realize anticipated cost savings.

*Risks Related to Acquisition Financing*

We may need to finance acquisitions by using shares of Common Stock for a portion or all of the consideration to be paid. In the event that the Common Stock does not maintain a sufficient market value, or potential acquisition candidates are otherwise unwilling to accept Common Stock as part of the consideration for the sale of their businesses, we may be required to use more of our cash resources, if available, to maintain our acquisition program. These cash resources may include borrowings under our credit agreement or equity or debt financings. Our current credit agreement with our bank lenders contains certain restrictions that could adversely affect our ability to implement and finance potential acquisitions. Such restrictions include a provision prohibiting us from merging or consolidating with, or acquiring all or a substantial part of the properties or capital stock of, any other entity without the prior written consent of the lenders. There can be no assurance that we will be able to obtain the lender's consent to any of our proposed acquisitions. If we do not have sufficient cash resources, our growth could be limited unless we are able to obtain additional capital through debt or equity financings.

*Ability to Comply with Financial Covenants of Credit Facility*

Our credit facility requires the Company to comply with certain specified covenants, restrictions, financial ratios and other financial and operating tests. The Company's ability to comply with any of the foregoing restrictions will depend on its future performance, which will be subject to prevailing economic conditions and other factors, including factors beyond the Company's control. A failure to comply with any of these obligations could result in an event of default under the credit facility, which could permit acceleration of the Company's indebtedness under the credit facility. The Company from time to time has been unable to comply with some of the financial covenants contained in the credit facility (relating to, among other things, the maintenance of prescribed financial ratios) and has, when necessary, obtained waivers or amendments to the covenants from its lenders. Although the Company expects to be able to comply with the covenants, including the financial covenants, of the credit facility, there can be no assurance that in the future the Company will be able to do so or, if is not able to do so, that its lenders will be willing to waive such compliance or further amend such covenants.

*Goodwill and intangible assets recorded as a result of our acquisitions could become impaired.*

Goodwill represents the difference between the purchase price of acquired companies and the related fair values of net assets acquired. We test goodwill for impairment annually and whenever events or changes in circumstances indicate that impairment may have occurred. As of December 31, 2011, our combined goodwill and intangible assets amounted to \$145.0 million, net of accumulated amortization. To the extent we do not generate sufficient cash flows to recover the net amount of any investments in goodwill and other intangible assets recorded, the investment could be considered impaired and subject to write-off. We expect to record additional goodwill and other intangible assets as a result of future acquisitions we may complete. Future amortization of such other intangible assets or impairments, if any, of goodwill or intangible assets would adversely affect our results of operations in any given period.

*Our business has substantial competition that could adversely affect our results.*

Our business is highly competitive. We compete with a variety of industrial supply distributors, some of which may have greater financial and other resources than us. Although many of our traditional distribution competitors are small enterprises selling to customers in a limited geographic area, we also compete with larger distributors that provide integrated supply programs such as those offered through outsourcing services similar to those that are offered by our SCS segment. Some of these large distributors may be able to supply their products in a more timely and cost-efficient manner than us. Our competitors include catalog suppliers, large warehouse stores and, to a lesser extent, certain manufacturers. Competitive pressures could adversely affect DXP's sales and profitability.

*The loss of or the failure to attract and retain key personnel could adversely impact our results of operations.*

We will continue to be dependent to a significant extent upon the efforts and ability of David R. Little, our Chairman of the Board, President and Chief Executive Officer. The loss of the services of Mr. Little or any other executive officer of our Company could have a material adverse effect on our financial condition and results of operations. In addition, our ability to grow successfully will be dependent upon our ability to attract and retain qualified management and technical and operational personnel. The failure to attract and retain such persons could materially adversely affect our financial condition and results of operations.

*The loss of any key supplier could adversely affect DXP's sales and profitability.*

We have distribution rights for certain product lines and depend on these distribution rights for a substantial portion of our business. Many of these distribution rights are pursuant to contracts that are subject to cancellation upon little or no prior notice. Although we believe that we could obtain alternate distribution rights in the event of such a cancellation, the termination or limitation by any key supplier of its relationship with the Company could result in a temporary disruption of our business and, in turn, could adversely affect our results of operations and financial condition.

*A slowdown in the economy could negatively impact DXP's sales growth.*

Economic and industry trends affect DXP's business. Demand for our products is subject to economic trends affecting our customers and the industries in which they compete in particular. Many of these industries, such as the oil and gas industry, are subject to volatility while others, such as the petrochemical industry, are cyclical and materially affected by changes in the economy. As a result, demand for our products could be adversely impacted by changes in the markets of our customers.

*Interruptions in the proper functioning of our information systems could disrupt operations and cause increases in costs and/or decreases in revenues.*

The proper functioning of DXP's information systems is critical to the successful operation of our business. Although DXP's information systems are protected through physical and software safeguards and remote processing capabilities exist, our information systems are still vulnerable to natural disasters, power losses, telecommunication failures and other problems. If critical information systems fail or are otherwise unavailable, DXP's ability to procure products to sell, process and ship customer orders, identify business opportunities, maintain proper levels of inventories, collect accounts receivable and pay accounts payable and expenses could be adversely affected.

**ITEM 1B. Unresolved Staff Comments**

None.

**ITEM 2. Properties**

We own our headquarters facility in Houston, Texas, which has approximately 48,000 square feet of office space. The Service Centers segment owns or leases 123 facilities located in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming and Sonora, Mexico. The Supply Chain Services segment operates supply chain installations in 55 of our customers' facilities in Alabama, Arkansas, Arizona, California, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The Innovative Pumping Solutions segment operates out of 8 facilities located in Texas, Louisiana, Colorado, Arizona and Nebraska. Our owned facilities range from 5,000 square feet to 65,000 square feet in size. We lease facilities for terms generally ranging from one to fifteen years. The leased facilities range from 1,500 square feet to 170,000 square feet in size. The leases provide for periodic specified rental payments and certain leases are renewable at our option. We believe that our facilities are suitable and adequate for the needs of our existing business. We believe that if the leases for any of our facilities were not renewed, other suitable facilities could be leased with no material adverse effect on our business, financial condition or results of operations. One of the facilities owned by us is pledged to secure our indebtedness.

**ITEM 3. Legal Proceedings**

On July 22, 2004, DXP and Ameron International Corporation, DXP's vendor of fiberglass reinforced pipe, were sued in the Twenty-Fourth Judicial District Court, Parish of Jefferson, State of Louisiana by BP America Production Company regarding the failure of Bondstrand PSX JFC pipe, a recently introduced type of fiberglass reinforced pipe which had been installed on four energy production platforms. BP American Production Company alleges negligence, breach of contract, breach of warranty and that damages exceed \$20 million. DXP believes the failures were not caused by work performed by DXP. We intend to vigorously defend these claims. Our insurance carrier has agreed, under a reservation of rights to deny coverage, to provide a defense against these claims. The maximum amount of our insurance coverage, if any, is \$6 million. Under certain circumstances, our insurance may not cover this claim. DXP currently believes the claim is without merit and the possibility of the claim having a material adverse effect on our business, financial condition, cash flows or results of operations is remote.

From time to time, the Company is a party to various legal proceedings arising in the ordinary course of its business. The Company believes that the outcome of any of these various proceedings will not have a material adverse effect on its business, cash flows, financial condition or results of operations.

**ITEM 4. Mine Safety Disclosures**

Not applicable.

## PART II

### ITEM 5. *Market for the Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

Our common stock trades on The NASDAQ Global Market under the stock symbol "DXPE".

The following table sets forth on a per share basis the high and low sales prices for our common stock as reported by NASDAQ for the periods indicated.

	High	Low
2010		
First Quarter	\$ 13.59	\$ 10.75
Second Quarter	\$ 17.98	\$ 11.25
Third Quarter	\$ 21.59	\$ 14.84
Fourth Quarter	\$ 24.76	\$ 17.61
2011		
First Quarter	\$ 24.99	\$ 18.43
Second Quarter	\$ 26.71	\$ 22.01
Third Quarter	\$ 27.81	\$ 17.89
Fourth Quarter	\$ 33.58	\$ 17.01

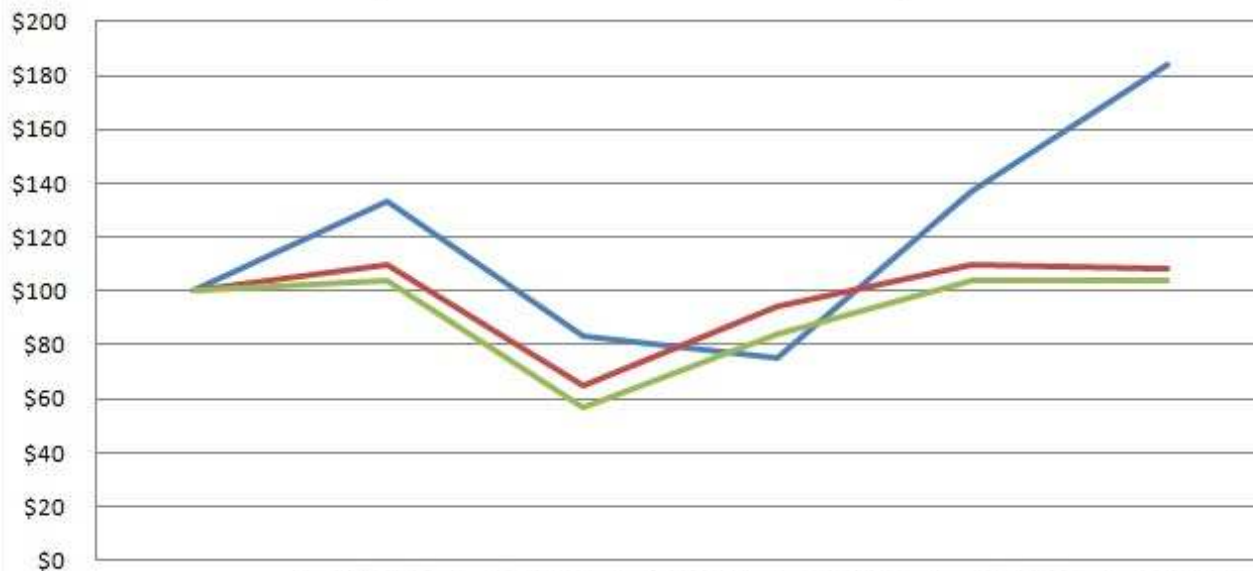
On March 5, 2012, we had approximately 499 holders of record for outstanding shares of our common stock. This number does not include shareholders for whom shares are held in "nominee" or "street name".

We anticipate that future earnings will be retained to finance the continuing development of our business. In addition, our bank credit facility prohibits us from declaring or paying any cash dividends or other distributions on our capital stock, except for the monthly \$0.50 per share dividend on our Series B convertible preferred stock, which amounts to \$90,000 in the aggregate per year. Accordingly, we do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of any future dividends will be at the discretion of our Board of Directors and will depend upon, among other things, future earnings, the success of our business activities, regulatory and capital requirements, lenders, and general financial and business conditions.

#### **Stock Performance**

The following performance graph compares the performance of DXP Common Stock to the NASDAQ Industrial Index and the NASDAQ Composite (US). The graph assumes that the value of the investment in DXP Common Stock and in each index was \$100 at December 31, 2006 and that all dividends were reinvested.

**Total Return to Stockholder**  
(Assumes \$100 investment on 12/31/06)



	12/31/06	12/31/07	12/31/08	12/31/09	12/31/10	12/31/11
DXP Enterprises	\$100	\$133	\$83	\$75	\$137	\$184
Nasdaq Composite	\$100	\$110	\$65	\$94	\$110	\$108
Nasdaq Industrial	\$100	\$104	\$57	\$84	\$104	\$104

Investors are cautioned against drawing conclusions from the data contained in the graph as past results are not necessarily indicative of future performance.

**Equity Compensation Table**

The following table provides information regarding shares covered by the Company's equity compensation plans as of December 31, 2011:

Plan category	Number of Shares to be issued on exercise of outstanding options	Weighted average exercise price of outstanding options	Non-vested restricted shares outstanding	Weighted average grant price	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by shareholders	N/A	N/A	228,592	\$21.10	48,784 <sup>(1)</sup>
Equity compensation plans not approved by shareholders	N/A	N/A	N/A	N/A	N/A
Total	N/A	N/A	228,592	\$21.10	48,784 <sup>(1)</sup>

(1) Represents shares of common stock authorized for issuance under the 2005 Restricted Stock Plan.

## Repurchases of Common Stock

The following table provides information about the Company's purchases of shares of the Company's common stock during the fourth quarter of 2011.

	Total Number of Shares Purchased <sup>(1)</sup>	Average Price Paid per Share	Total Number of shares Purchased as part of Publicly announced Plans or Programs	Maximum Number of Shares that may yet be Purchased under the Plans or Programs
October 1, 2011 through October 31, 2011	15,171	\$17.90	-	-
<b>Totals</b>	<b>15,171</b>	<b>\$17.90</b>	<b>-</b>	<b>200,000 <sup>(2)</sup></b>

<sup>(1)</sup> Shares were purchased in non-open market transactions.

<sup>(2)</sup> On October 26, 2011, the Board of Directors authorized DXP from time to time to purchase up to 200,000 shares of DXP's common stock over 24 months. DXP publicly announced the authorization that day. Purchases may be made in open market or in privately negotiated transactions. DXP had not purchased any shares under this authorization as of December 31, 2011.

## ITEM 6. Selected Financial Data

The selected historical consolidated financial data set forth below for each of the years in the five-year period ended December 31, 2011 has been derived from our audited consolidated financial statements. This information should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and notes thereto included elsewhere in this Report.

	Years Ended December 31,				
	2007 Restated <sup>(1)</sup>	2008 Restated <sup>(1)</sup>	2009 <sup>(2)</sup>	2010	2011
	(in thousands, except per share amounts)				
<b>Consolidated Statement of Earnings Data:</b>					
Sales	\$ 444,547	\$ 736,883	\$ 583,226	\$ 656,202	\$ 807,005
Gross Profit	125,692	206,988	151,414	188,395	231,836
Operating income (loss)	31,892	48,191	(49,332)	37,091	55,485
Income (loss) before income taxes	28,897	42,284	(54,482)	32,132	51,995
Net income (loss)	17,347	25,887	(42,412)	19,381	31,437
<b>Per share amounts</b>					
Basic earnings (loss) per common share	\$ 1.46	\$ 1.99	\$ (3.24)	\$ 1.40	\$ 2.19
Common shares outstanding	11,811	12,945	13,117	13,821	14,301
Diluted earnings (loss) per share	\$ 1.35	\$ 1.87	\$ (3.24)	\$ 1.32	\$ 2.08
Common and common equivalent shares outstanding	12,860	13,869	13,117	14,821	15,141

(1) Basic and diluted earnings per share amounts have been restated due to adoption in the first quarter of 2009 of authoritative guidance which requires awards of unvested restricted stock to be treated as if outstanding in the calculation of earnings per share. On September 30, 2008, DXP paid a two for one common stock dividend. DXP's financial statements have been restated to reflect the effect of this common stock dividend on all periods presented.

(2) The goodwill and other intangibles impairment charge and the Precision inventory impairment charge in 2009 reduced operating income by \$66.8 million and increased basic and diluted loss per share by \$3.82.





Consolidated Balance Sheet Data	As of December 31,				
	2007	2008	2009	2010	2011
Total assets	\$ 288,170	\$ 397,856	\$ 270,927	\$ 320,624	\$ 405,338
Long-term debt obligations	101,989	154,591	102,916	103,621	114,205
Shareholders' equity	102,713	130,188	90,213	124,120	156,675

## ITEM 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations*

*The following discussion and analysis should be read in conjunction with the Consolidated Financial Statements and related notes contained elsewhere in this Report.*

### **General Overview**

Our products and services are marketed in at least 42 states in the United States and Sonora, Mexico to over 50,000 customers that are engaged in a variety of industries, many of which may be countercyclical to each other. Demand for our products generally is subject to changes in the United States and global economy and economic trends affecting our customers and the industries in which they compete in particular. Certain of these industries, such as the oil and gas industry, are subject to volatility while others, such as the petrochemical industry and the construction industry, are cyclical and materially affected by changes in the United States and global economy. As a result, we may experience changes in demand within particular markets, segments and product categories as changes occur in our customers' respective markets.

During 2007, the general economy and the oil and gas exploration and production business continued to be positive. During 2007, our headcount increased by 112% primarily as a result of three acquisitions. Sales by the three businesses acquired in 2007 accounted for \$92.3 million of the \$164.7 million sales increase. The 2007 sales increase, excluding sales of businesses acquired in 2006 and 2007, resulted from a broad based increase in sales by our service centers, innovative pumping solution locations and supply chain locations. Excluding sales of businesses acquired in 2006 and 2007, on a same store sales basis, 2007 sales increased by 15.7%.

During 2008, the general economy weakened. However, the oil and gas exploration and production business continued to be positive during the first half of 2008, before declining during the second half of 2008. During 2008 our headcount increased by 18% primarily as a result of three acquisitions. Sales by the three businesses acquired in 2008 accounted for \$33.4 million of 2008 sales. Sales by the three businesses acquired in 2007 accounted for \$200.4 million of 2008 sales, on a same store sales basis. Excluding sales of businesses acquired in 2007 and 2008, on a same store sales basis, 2008 sales increased 13.2%. This increase resulted from a broad-based increase in sales by our service centers, innovative pumping solution locations and supply chain locations.

During 2009, the general economy and the oil and gas exploration and production business declined significantly. During 2009, our headcount decreased by approximately 10% as a result of actions taken to reduce operating costs. Sales for 2009 declined by 21% from 2008. Sales by businesses acquired during 2008, on a same store sales basis, accounted for \$36.1 million of 2010 sales. Excluding these sales by acquired businesses, sales declined by 26% from 2008. The 2009 sales decline is primarily due to a broad-based decline in the sales of pumps, bearings, safety products and industrial supplies in connection with a broad-based decline in the U.S. economy. This economic decline led to the impairment of our goodwill and other intangibles. During the fourth quarter of 2009 the Company recognized an impairment charge of \$53.0 million for goodwill and other intangibles and an impairment charge of \$13.8 million to reduce the valuation of inventory acquired in the acquisition of Precision. The impairment charges did not result in any cash expenditures, did not adversely affect compliance with covenants under our credit facility, and did not affect our cash position or cash flows from operating activities.

During 2010, the general economy and the oil and gas exploration and production business improved. Our employee headcount increased by approximately 7% as a result of two acquisitions. Excluding the employees at the two acquired businesses headcount declined by approximately 1%, primarily as a result of consolidating back office functions. Sales by Quadna, acquired April 1, 2010 and D&F, acquired December 1, 2010, accounted for \$43.6 million of 2010 sales. Excluding Quadna and D&F sales, sales for 2010 increased 5.0%.

During 2011, the general economy and the oil and gas exploration and production business continued to improve. Our employee headcount increased by 18% primarily as a result of two acquisitions and hiring additional personnel to support increased sales. Sales for the year ended December 31, 2011 increased \$150.8 million, or 23.0%, to approximately \$807.0 million from \$656.2 million in 2010. Sales by KC, acquired October 10, 2011, accounted for \$11.9 million of 2011 sales. Sales by businesses acquired in 2010, on a same store sales basis, accounted for \$35.6 million of 2011 sales. Excluding 2011 sales by businesses acquired in 2010 and 2011, on a same store sales basis, sales increased 15.8% from 2010. The majority of the 2011 sales increase came from a broad-based increase in sales of pumps, bearings, safety products and industrial supplies to customers engaged in oilfield service, oil and gas exploration and production, mining, manufacturing and petrochemical processing.

Our sales growth strategy in recent years has focused on internal growth and acquisitions. Key elements of our sales strategy include leveraging existing customer relationships by cross-selling new products, expanding product offerings to new and existing customers, and increasing business-to-business solutions using system agreements and supply chain solutions for our integrated supply customers. We will continue to review opportunities to grow through the acquisition of distributors and other businesses that would expand our geographic breadth and/or add additional products and services. Our results will depend on our success in executing our internal growth strategy and, to the extent we complete any acquisitions, our ability to integrate such acquisitions effectively.

Our strategies to increase productivity include consolidated purchasing programs, centralizing product distribution centers, and customer service and inside sales functions, converting selected locations from full warehouse and customer service operations to service centers, and using information technology to increase employee productivity.

## Results of Operations

	Years Ended December 31,					
	2009 <sup>(1)</sup>	%	2010	%	2011	%
	(in millions, except percentages and per share amounts)					
Sales	\$ 583.2	100.0	\$ 656.2	100.0	\$ 807.0	100.0
Cost of sales	431.8	74.0	467.8	71.3	575.2	71.3
Gross profit	151.4	26.0	188.4	28.7	231.8	28.7
Selling, general & administrative expense	147.8	25.3	151.3	23.1	176.3	21.9
Goodwill and other intangibles impairment	53.0	9.1	-	-	-	-
Operating income (loss)	(49.3)	(8.5)	37.1	5.7	55.5	6.9
Interest expense	5.2	0.9	5.2	0.8	3.5	0.4
Other income	(0.1)	-	(0.2)	-	-	-
Income (loss) before income taxes	(54.5)	(9.3)	32.1	4.9	52.0	6.4
Provision (benefit) for income taxes	(12.1)	(2.1)	12.7	2.0	20.6	2.5
Net income (loss)	\$(42.4)	(7.3%)	\$ 19.4	3.0	\$ 31.4	3.9
Per share						
Basic earnings (loss) per share	\$(3.24)		\$ 1.40		\$ 2.19	
Diluted earnings (loss) per share	\$(3.24)		\$ 1.32		\$ 2.08	

(1) The goodwill and other intangibles impairment charge and the Precision inventory impairment charge in 2009 reduced operating income by \$66.8 million and increased basic and diluted loss per share by \$3.82.

DXP is organized into three business segments: Service Centers, Supply Chain Services (“SCS”) and Innovative Pumping Solutions (“IPS”). The Service Centers are engaged in providing maintenance, repair and operating products, equipment and services, including logistics capabilities, to industrial customers. The Service Centers provide a wide range of MRO products in the rotating equipment, bearing, power transmission equipment, fastener, cutting tools, industrial supplies and safety product categories. The IPS segment fabricates and assembles custom-made engineered pump packages. The SCS segment manages all or part of customer’s supply chain, including inventory.

## **Year Ended December 31, 2011 compared to Year Ended December 31, 2010**

**SALES.** Sales for the year ended December 31, 2011 increased \$150.8 million, or 23.0%, to approximately \$807.0 million from \$656.2 million in 2010. Sales by KC, acquired October 10, 2011, accounted for \$11.9 million of 2011 sales. Sales by businesses acquired in 2010, on a same store sales basis, accounted for \$35.6 million of 2011 sales. Excluding 2011 sales by businesses acquired in 2010 and 2011, on a same store sales basis, sales increased 15.8% from 2010.

**GROSS PROFIT.** Gross profit as a percentage of sales was 28.7% for 2011 and 2010.

**SELLING, GENERAL AND ADMINISTRATIVE.** Selling, general and administrative expense for 2011 increased by approximately \$25.0 million when compared to 2010. A portion of the increase relates to \$9.6 million of selling, general and administrative expense for businesses acquired in 2010 and 2011, on a same store sales basis. Excluding the expenses of businesses acquired in 2010 and 2011, on a same store sales basis, the increase primarily resulted from increased salaries, incentive compensation, employee benefits and travel expenses compared to 2010. As a percentage of revenue, the 2011 expense decreased to 21.9% from 23.1% for 2010.

**OPERATING INCOME.** Operating income for 2011 increased 49.6% compared to 2010. This increase is the result of gross profit increasing 23.1% while selling, general and administrative expense increased only 16.6%.

**INTEREST EXPENSE.** Interest expense for 2011 decreased by 32.5% from 2010. This decrease primarily resulted from lower average interest rates combined with a reduction in the average amount of debt outstanding compared to 2010. On July 25, 2011 we amended our credit facility. This amendment significantly decreased the interest rates and commitment fees applicable at various leverage ratios from levels in effect before July 25, 2011.

**INCOME TAXES.** Our provision for income taxes differed from the U. S. statutory rate of 35% due to state income taxes and non-deductible expenses. Our effective tax rate for 2011 of 39.6% was consistent with the 39.7% rate for 2010.

**SERVICE CENTERS SEGMENT.** Sales for the Service Centers segment increased \$107.5 million, or 23.7%. Excluding \$9.1 million of first quarter 2011 Quadna Service Centers segment sales, first eleven months of 2011 sales by D&F of \$23.2 million and \$5.9 million of fourth quarter 2011 KC Service Centers segment sales, Service Center segment sales for 2011 increased 15.3% from 2010, on a same store sales basis. This sales increase is primarily due to improvement in the oil and gas and manufacturing portions of the U.S. economy. Operating income for the Service Centers segment increased 27.6%, primarily as a result of the 23.7% increase in sales combined with an increase in gross profit as a percentage of sales.

**SUPPLY CHAIN SERVICES SEGMENT.** Sales for the SCS segment increased by \$18.0 million, or 14.2%, for 2011 when compared to 2010. Excluding KC SCS segment sales of \$5.9 million, SCS segment sales for 2011 increased 9.5% from 2010, on a same store sales basis. Operating income for the SCS segment increased 18.7% primarily as a result of the 14.2% increase in sales for this segment.

**INNOVATIVE PUMPING SOLUTIONS SEGMENT.** Sales for the IPS segment increased by \$25.3 million, or 32.8% for 2011 when compared to 2010. Excluding first quarter 2011 Quadna IPS sales of \$3.3 million, IPS sales for 2011 increased 28.5% from 2010, on a same store sales basis. The sales increase resulted from the increase in capital spending by our oil and gas and mining related customers. Operating income for the IPS segment increased 63.7% as a result of the 32.8% increase in sales combined with relatively consistent selling, general and administrative expenses.

## **Year Ended December 31, 2010 compared to Year Ended December 31, 2009**

**SALES.** Sales for the year ended December 31, 2010 increased \$73.0 million, or 12.5%, to approximately \$656.2 million from \$583.2 million in 2009. Sales by Quadna, acquired April 1, 2010 and D&F, acquired December 1, 2010, accounted for \$43.6 million of 2010 sales. Excluding Quadna and D&F sales, sales for 2010 increased 5.0%, on a same store sales basis.

**GROSS PROFIT.** Gross profit as a percentage of sales increased to approximately 28.7% for 2010 from 26.0% for 2009. This increase is primarily the result of the \$13.8 million charge in the fourth quarter of 2009 to reduce the value of inventory acquired with the acquisition of Precision on September 10, 2007. Excluding this \$13.8 million charge, gross profit as a percentage of sales for 2009 would have been 28.3%. The increase in gross profit as a percentage of sales in 2010 from this 28.3% for 2009 is primarily the result of improvement in the U.S. economy.

**SELLING, GENERAL AND ADMINISTRATIVE EXPENSE.** Selling, general and administrative expense for 2010 increased by approximately \$3.5 million, or 2.4%, when compared to 2009. Selling, general and administrative expense for Quadna and D&F for 2010 was \$7.6 million. As a percentage of revenue, the 2010 expense decreased to 23.1%, from 25.3% for 2009. This decrease is primarily the result of sales increasing 12.5% and expenses increasing only 2.4%.

**OPERATING INCOME.** Excluding the effect of the \$13.8 million inventory impairment charge and the \$53.0 million goodwill and other intangible impairment charges recorded in 2009, operating income for 2010 increased 112% compared to 2009.

**INTEREST EXPENSE.** Interest expense for 2010 decreased by 0.7% from 2009. On March 15, 2010 we amended our credit facility. This amendment significantly increased the interest rates and commitment fees applicable at various leverage ratios from levels in effect before March 15, 2010. The amendment increased the cost of funds borrowed under our credit facility by approximately 200 basis points beginning on March 16, 2010. This increase in interest rates was offset by the effect of lower average debt outstanding during 2010 compared to 2009.

**INCOME TAXES.** Our provision for income taxes differed from the U. S. statutory rate of 35% due to state income taxes and non-deductible expenses. Our effective tax rate for 2010 of 39.7% increased from 22.2% for 2009. The 2009 tax rate was unusually low primarily as a result of the non-deductible goodwill and other intangibles impairment charge for PFI, LLC recorded in 2009.

**SERVICE CENTERS SEGMENT.** Sales for the Service Centers segment increased \$61.7 million, or 15.8%. Excluding Quadna and D&F Service Centers sales of \$26.2 million, Service Centers segment sales for 2010 increased 9.1% from 2009. This sales increase is primarily due to improvement in the industrial portion of the U.S. economy. Operating income for the Service Centers segment increased \$26.2 million. Excluding the effect of the \$12.8 million of inventory impairment charges recorded by the Service Centers segment during 2009, operating income for the Service Centers segment increased 35.9% as a result of the 15.8% increase in sales combined with the effect of cost reduction measures implemented during 2009 and 2010.

**SUPPLY CHAIN SERVICES SEGMENT.** Sales for the SCS segment decreased by \$9.8 million, or 7.2%, from 2009. The sales decrease by SCS resulted from sales to customers in 2009 which subsequently terminated supply agreements, exceeding sales to customers which had been added since 2009. Operating income for the SCS segment increased 28.3%. Excluding the \$1.0 million of inventory impairment charges recorded by the SCS segment during 2009, operating income for the SCS segment increased by 8.7%, primarily as a result of the reduced administrative costs for this segment.

**INNOVATIVE PUMPING SOLUTIONS SEGMENT.** Sales for the IPS segment increased by \$21.1 million, or 37.8%, for 2010 when compared to 2009. Excluding Quadna IPS sales of \$17.4 million for 2010, IPS sales increased 6.6% from 2009. The sales increase resulted from the improvement in the economy and the associated increase in capital spending by our customers. Operating income for the IPS segment increased 37.5% as a result of the 37.8% increase in sales.

## Pro Forma Results

The pro forma unaudited results of operations for the Company on a consolidated basis for the years ended December 31, 2009 and 2010, assuming the acquisitions of businesses completed in 2010 were consummated as of January 1, 2009 follows:

	Years Ended December 31,	
	2009	2010
	(Unaudited)	
	In Thousands, except for per share data	
Net sales	\$653,175	\$ 689,675
Net (loss) income	\$(39,967)	\$ 20,843
Per share data		
Basic Earnings	\$(3.04)	\$1.50
Diluted Earnings	\$(3.04)	\$1.42

The pro forma unaudited results of operations for the Company on a consolidated basis for the years ended December 31, 2010 and 2011, assuming the acquisitions of businesses completed in 2011 were consummated as of January 1, 2010 follows:

	Years Ended December 31,	
	2010	2011
	(Unaudited)	
	In Thousands, except for per share data	
Net sales	\$ 778,267	\$ 903,240
Net income	\$ 22,898	\$ 35,511
Per share data		
Basic Earnings	\$ 1.65	\$ 2.48
Diluted Earnings	\$ 1.56	\$2.35

## Liquidity and Capital Resources

### General Overview

As a distributor of MRO products and services, we require significant amounts of working capital to fund inventories and accounts receivable. Additional cash is required for capital items such as information technology and warehouse equipment. We also require cash to pay our lease obligations and to service our debt.

We generated approximately \$25.8 million of cash in operating activities in 2011 as compared to generating \$23.9 million in 2010. This change between the two years was primarily attributable to the \$12.1 million increase in net income, partially offset by the \$21.5 million increase in accounts receivable in 2011 compared to a \$14.5 million increase in accounts receivable in 2010.

During 2011 we paid \$18.4 million of cash for two businesses acquired during 2011 compared to paying \$18.2 million of cash related to the purchase of two businesses during 2010 and \$0.2 million related to businesses acquired before 2009. The \$18.4 million of cash paid for acquisitions in 2011 excludes \$36.7 million in outstanding checks at December 31, 2011 related to the acquisition of CW Rod and approximately \$2.2 million expected to be paid due to a working capital adjustment.

We purchased approximately \$4.1 million of capital assets during 2011 compared to \$1.2 million for 2010. Capital expenditures during 2011 and 2010 were related primarily to computer equipment, computer software, production equipment, inventory handling equipment, safety rental equipment and building improvements. Capital expenditures for 2012 are expected to be in the range of the 2009, 2010 and 2011 amounts.

At December 31, 2011, our total long-term debt, including the current portion, was \$114.9 million compared to total capitalization (total long-term debt plus shareholders' equity) of \$271.6 million. Approximately \$110.8 million of this outstanding debt bears interest at various floating rates. Therefore, as an example, a 200 basis point increase in interest rates would increase our annual interest expense by approximately \$2.2 million.

Our normal trade terms for our customers require payment within 30 days of invoice date. In response to competition and customer demands we will offer extended terms to selected customers with good credit history. Customers that are financially strong tend to request extended terms more often than customers that are not financially strong. Many of our customers, including companies listed in the Fortune 500, do not pay us within stated terms for a variety of reasons, including a general business philosophy to pay vendors as late as possible.

During 2011, the amount available to be borrowed under our credit facility increased from \$50.0 million at December 31, 2010, to \$78.2 million at December 31, 2011. The increase in availability is primarily the result of the effect of increased accounts receivable and inventories. Our total long-term debt increased \$0.3 million during 2011. Management believes that the liquidity of our balance sheet at December 31, 2011, provides us with the ability to meet our working capital needs, scheduled principal payments, capital expenditures and Series B convertible preferred stock dividend payments during 2012.

### *Credit Facility*

On August 28, 2008, DXP entered into a credit agreement with Wells Fargo Bank, National Association, as lead arranger and administrative agent for the lenders (the "Facility"). The Facility was amended on March 15, 2010. The March 15, 2010 amendment to the Facility significantly increased the interest rates and commitment fees applicable at various leverage ratios from levels in effect before March 15, 2010. Effective July 25, 2011 DXP entered into a Second Amendment to the Credit Facility with Wells Fargo Bank, National Association. The Second Amendment reduced interest rates; deleted the Senior Leverage Ratio; increased the maximum leverage ratio to not greater than 4.00 to 1.00 as of the last day of each quarter; allows DXP to purchase, redeem and retire equity for aggregate consideration not exceeding \$5.0 million; and modified covenants to increase DXP's ability to complete future acquisitions. The term loan was repaid using funds from the \$150 million line of credit. Effective December 30, 2011 DXP entered into a Third Amendment to the Facility. The Third Amendment increased the maximum amount of the Facility from \$150 million to \$200 million. The Facility provides the option of interest at LIBOR plus a margin ranging from 1.25% to 2.75%, or prime plus a margin of minus 0.25% to 1.25%. Commitment fees of 0.15% to 0.40% per annum are payable on the portion of the Facility capacity not in use for borrowings or letters of credit at any given time. The Facility expires on July 25, 2016. The Facility consists of a revolving credit facility that provides a \$200 million line of credit to the Company. The Facility contains financial covenants defining various financial measures and levels of these measures with which the Company must comply. Covenant compliance is assessed as of each quarter end and certain month ends for the asset test. The asset test is defined under the Facility as the sum of 90% of the Company's net accounts receivable, 65% of net inventory, and 50% of the net book value of non real estate property and equipment. The Company's borrowing and letter of credit capacity under the revolving credit portion of the Facility at any given time is \$200 million less borrowings under the revolving credit portion of the facility and letters of credit outstanding, subject to the asset test described above.

On December 31, 2011, the LIBOR based rate of the Facility was LIBOR plus 1.5%, the prime based rate of the Facility was prime plus 0.0% and the commitment fee was 0.2%. At December 31, 2011, \$110.5 million was borrowed under the Facility at a weighted average interest rate of approximately 1.78% under the LIBOR options and \$0.3 million was borrowed at 3.25% under the prime option. Borrowings under the Facility are secured by all of the Company's accounts receivable, inventory, general intangibles and non real estate property and equipment. At December 31, 2011, we had \$78.2 million available for borrowing under the Facility.

The Facility's principal financial covenants include:

Fixed Charge Coverage Ratio –The Facility requires that the Fixed Charge Coverage Ratio for the 12 month period ending on the last day of each quarter be not less than 1.50 to 1.0 with “Fixed Charge Coverage Ratio” defined as the ratio of (a) EBITDA for the 12 months ending on such date minus cash taxes and Capital Expenditures for such period (excluding acquisitions) to (b) the aggregate of interest expense paid in cash, scheduled principal payments in respect of long-term debt and current portion of capital leases for such 12-month period, determined in each case on a consolidated basis for DXP and its subsidiaries. At December 31, 2011, the Company's Fixed Charge Coverage Ratio was 14.2.

Leverage Ratio – The Facility requires that the Company’s Leverage Ratio, determined at the end of each fiscal quarter, not exceed 4.0 to 1.0 as of the last day of each quarter. The Leverage Ratio is defined as the outstanding Indebtedness divided by EBITDA for the 12 months then ended. At December 31, 2011, the Company’s Leverage Ratio was 1.49 to 1.00. Indebtedness is defined under the Facility for financial covenant purposes as: (a) all obligations of DXP for borrowed money including but not limited to senior bank debt, senior notes and subordinated debt; (b) capital leases; (c) issued and outstanding letters of credit; and (d) contingent obligations for funded indebtedness.

The following is the computation of the Leverage Ratio as of December 31, 2011 (in thousands, except for ratios):

For the Year ended December 31, 2011	Leverage Ratio
Income before taxes	\$51,995
Interest expense	3,518
Depreciation and amortization	10,082
Stock compensation expense	1,256
Pro forma acquisition EBITDA	10,871
Reduction of closed location accrual	(123)
<sup>(A)</sup> Defined EBITDA	77,599
<b>As of December 31, 2011</b>	
Total long-term debt	114,899
Letters of credit outstanding	951
<sup>(B)</sup> Defined indebtedness	\$115,850
Leverage Ratio (B)/(A)	1.49

EBITDA as defined under the Facility for financial covenant purposes means, without duplication, for any period the consolidated net income (excluding any extraordinary gains or losses) of DXP plus, to the extent deducted in calculating consolidated net income, depreciation, amortization, other non-cash items and non-recurring items (including, without limitation, impairment charges, asset write-offs and accruals in respect of closed locations), interest expense and tax expense for taxes based on income and minus, to the extent added in calculating consolidated net income, any non-cash items and non-recurring items; provided that, if DXP acquires the equity interests or assets of any person during such period under circumstances permitted under the Facility, EBITDA shall be adjusted to give pro forma effect to such acquisition assuming that such transaction had occurred on the first day of such period and provided further that, if DXP divests the equity interests or assets of any person during such period under circumstances permitted under the Facility, EBITDA shall be adjusted to give pro forma effect to such divestiture assuming that such transaction had occurred on the first day of such period. Add-backs allowed pursuant to Article 11, Regulation S-X, of the Securities Act of 1933, as amended, will also be included in the calculation of EBITDA.



## Performance Metrics

	December 31,		Increase (Decrease)
	2011	2010	
Days of sales outstanding (in days)	58.6	57.5	1.1
Inventory turns	7.1	6.2	0.9

Results for businesses acquired during each year were annualized to compute these performance metrics.

Accounts receivable days of sales outstanding were 58.6 at December 31, 2011 compared to 57.5 days at December 31, 2010. The increase resulted primarily from a change in customer mix which resulted in slower collection of accounts receivable. Annualized inventory turns were 7.1 times at December 31, 2011 compared to 6.2 times at December 31, 2010. The increase in inventory turns primarily resulted from the improvement in the U. S. economy.

### Funding Commitments

We believe our cash generated from operations and available under our Facility will meet our normal working capital needs during the next twelve months. However, we may require additional debt or equity financing to fund potential acquisitions. Such additional financings may include additional bank debt or the public or private sale of debt or equity securities. In connection with any such financing, we may issue securities that substantially dilute the interests of our shareholders. We may not be able to obtain additional financing on acceptable terms, if at all.

### Share Repurchases

During 2011, DXP repurchased 65,171 shares of DXP's common stock in non-open market transactions at an average price per share of \$22.18.

On October 26, 2011, the Board of Directors authorized DXP from time to time to purchase up to 200,000 shares of DXP's common stock over 24 months. DXP publicly announced the authorization that day. Purchases may be made in open market or in privately negotiated transactions. DXP had not purchased any shares under this authorization as of December 31, 2011.

### Borrowings

	December 31,		Increase (Decrease)
	2011	2010	
	(in thousands)		
Current portion of long-term debt	\$ 694	\$ 10,930	\$(10,236)
Long-term debt, less current portion	114,205	103,621	10,584
Total long-term debt	\$ 114,899	\$ 114,551	\$348
Amount available <sup>(1)</sup>	\$ 78,201	\$ 50,020	\$28,181 <sup>(2)</sup>

(1) Represents amount available to be borrowed under the Facility at the indicated date.

(2) The \$28.2 million increase in the amount available is primarily a result of the effect of increased accounts receivable and inventories on the loan covenant ratios.

### Contractual Obligations

The impact that our contractual obligations as of December 31, 2011 are expected to have on our liquidity and cash flow in future periods is as follows (in thousands):

	Payments Due by Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long-term debt, including current portion <sup>(1)</sup>	\$114,899	\$ 694	\$ 2,796	\$111,409	\$ -
Operating lease obligations	44,710	11,191	17,972	8,754	6,793
Estimated interest payments <sup>(2)</sup>	553	320	218	15	-
Total	\$160,162	\$12,205	\$20,986	\$120,178	\$ 6,793

(1) Amounts represent the expected cash payments of our long-term debt and do not include any fair value adjustment.

(2) Assumes interest rates in effect at December 31, 2011. Assumes debt is paid on maturity date and not replaced. Does not include interest on the revolving line of credit as borrowings under the Facility fluctuate. The amounts of interest incurred for borrowings under the revolving lines of credit were approximately \$4,700,000, \$4,900,000, and \$3,000,000 for 2009, 2010 and 2011, respectively. Management anticipates an increased level of interest payments on the Facility in 2012 as a result of expected increased borrowings to fund expected acquisitions.

### Off-Balance Sheet Arrangements

As part of our ongoing business, we do not participate in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities ("SPE's"), which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As of December 31, 2011, we were not involved in any unconsolidated SPE transactions, nor did we have any other off-balance sheet arrangements.

### Indemnification

In the ordinary course of business, DXP enters into contractual arrangements under which DXP may agree to indemnify customers from any losses incurred relating to the services we perform. Such indemnification obligations may not be subject to maximum loss clauses. Historically, payments made related to these indemnities have been immaterial.

### Discussion of Critical Accounting Policies

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The significant estimates made by us in the accompanying financial statements relate to reserves for accounts receivable collectability, inventory valuations, valuation of intangibles, impairment analysis, income taxes, self-insured liability claims and self-insured medical claims. Actual results could differ from those estimates. Management periodically re-evaluates these estimates as events and circumstances change. Together with the effects of the matters discussed above, these factors may significantly impact the Company's results of operations from period-to-period.

Critical accounting policies are those that are both most important to the portrayal of a company's financial position and results of operations, and require management's subjective or complex judgments. These policies have been discussed with the Audit Committee of the Board of Directors of DXP. Below is a discussion of what we believe are our critical accounting policies. Also, see Note 1 of the Notes to the Consolidated Financial Statements.

### *Revenue Recognition*

For binding agreements to fabricate tangible assets to customer specifications, the Company recognizes revenues using the percentage of completion method. Under this method, revenues are recognized as costs are incurred and include estimated profits calculated on the basis of the relationship between costs incurred and total estimated costs at completion. If at any time expected costs exceed the value of the contract, the loss is recognized immediately. Approximately \$9.8 million of revenues were recognized on contracts in process as of December 31, 2011. The typical time span of these contracts is approximately one to two years.

For other sales, the Company recognizes revenues when an agreement is in place, the price is fixed, title for product passes to the customer or services have been provided and collectability is reasonably assured. Revenues are recorded net of sales taxes. Revenues recognized include product sales and billings for freight and handling charges.

### *Allowance for Doubtful Accounts*

Provisions to the allowance for doubtful accounts are made monthly and adjustments are made periodically (as circumstances warrant) based upon the expected collectability of all such accounts. Write-offs could be materially different from the reserve provided if economic conditions change or actual results deviate from historical trends.

### *Inventory*

Inventory consists principally of finished goods and is priced at lower of cost or market, cost being determined using the first-in, first-out (FIFO) method. Reserves are provided against inventory for estimated obsolescence based upon the aging of the inventory and market trends. Actual obsolescence could be materially different from the reserve if economic conditions or market trends change significantly.

### *Self-insured Insurance and Medical Claims*

We generally retain up to \$100,000 of risk for each claim for workers compensation, general liability, automobile and property loss. We accrue for the estimated loss on the self-insured portion of these claims. The accrual is adjusted quarterly based upon reported claims information. The actual cost could deviate from the recorded estimate.

We generally retain up to \$200,000 of risk on each medical claim for our employees and their dependents. We accrue for the estimated outstanding balance of unpaid medical claims for our employees and their dependents. The accrual is adjusted monthly based on recent claims experience. The actual claims could deviate from recent claims experience and be materially different from the reserve.

The accrual for these claims at December 31, 2011 and 2010 was approximately \$2.4 million and \$1.8 million, respectively.

### *Impairment of Long-Lived Assets and Goodwill*

Goodwill represents a significant portion of our total assets. We review goodwill for impairment annually during our fourth quarter, or more frequently if certain impairment indicators arise under the provisions of authoritative guidance. We review goodwill at the reporting level unit, which is one level below an operating segment. In prior years we compared the carrying value of the net assets of each reporting unit to the net present value of estimated discounted anticipated cash flows of each reporting unit, discounted using a weighted average cost of capital rate. If the carrying value exceeded the net present value of estimated discounted anticipated cash flows, an impairment indicator existed and an estimate of the impairment loss was calculated. The fair value calculation included management views and multiple assumptions and estimates, including the projected cash flows and discount rates applied. Estimated cash flows were primarily based on projected revenues, operating costs and capital expenditures and were discounted based on comparable industry average rates for weighted average cost of capital. Changes in these assumptions and estimates could have resulted in goodwill impairment that could have materially adversely impacted our financial position or results of operations. Assets, liabilities, deferred taxes and goodwill for each reporting unit were determined using the balance sheets maintained for each reporting unit.

The following are examples of events or changes in circumstances that might suggest an asset or asset group should be tested for impairment:

- a. A significant decrease in the market price of a long-lived asset (asset group)
- b. A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition
- c. A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator
- d. A current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group)
- e. A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

Goodwill of \$101.8 million was primarily recorded in connection with the 17 acquisitions completed since 2004. Approximately \$16.0 million of goodwill is included in our Innovative Pumping Solutions segment. Approximately \$82.9 million of goodwill is included in the two reporting units for our Service Centers segment which are DXP and PFI. Approximately \$2.9 million of goodwill is included in our Supply Chain Services segment.

During 2011 the U.S. economy improved and oil prices increased, which led to improvements in our sales, margins and cash flows. Our sales and profitability improved throughout the year. We considered the impact of these changes in the economic and business climate as we performed our annual impairment assessments of goodwill as of December 31, 2011. In the fourth quarter of 2011, in conjunction with our December 31, 2011 goodwill assessment, we adopted new accounting guidance that allows an entity to first assess qualitative factors to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount and if a quantitative assessment should be performed. We performed a qualitative analysis and concluded it is more likely than not that the fair value of each reporting unit is not less than its carrying value and therefore, did not perform a quantitative analysis. Accordingly, the annual impairment assessment at December 31, 2011 indicated there is no impairment of goodwill. Qualitative factors considered during our assessment include the capital markets environment, U.S. economic conditions, industrial distribution industry competition and trends, oil and gas exploration and production industry trends, changes in our results of operations, the magnitude of the excess of fair value over the carrying amount of each reporting unit as determined in prior years' quantitative testing and other factors. We believe the fair value of our reporting units substantially exceeds the carrying value of our reporting units.

Long-lived assets, including property, plant and equipment and amortizable intangible assets comprise a significant portion of our total assets. We evaluate the carrying value of long-lived assets when impairment indicators are present or when circumstances indicate that impairment may exist under authoritative guidance. When events or changes in circumstances indicate that a long-lived asset carrying amount may not be recoverable, a long-lived asset or assets shall be grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Depending on the circumstances, this could be at a reporting unit or segment level. Estimates of future cash flows are generally used to test the recoverability of a long-lived asset (asset group), unless market information is available that would more clearly indicate the fair value of an asset or asset group. To the extent estimates of future cash flows are utilized, only the future cash flows (cash inflows less associated cash outflows) that are directly associated with, and that are expected to arise as a direct result of the use and eventual disposition of the asset (asset group) are utilized. Those estimates shall exclude interest charges that will be recognized as an expense when incurred. These impairment tests are heavily influenced by assumptions and estimates that are subject to change as additional information becomes available. We concluded DXP did not have an impairment of long-lived assets during 2011.

### *Purchase Accounting*

The Company estimates the fair value of assets, including property, machinery and equipment and their related useful lives and salvage values, intangibles and liabilities when allocating the purchase price of an acquisition.

### *Cost of Sales and Selling, General and Administrative Expense*

Cost of sales includes product and product related costs, inbound freight charges, internal transfer costs and depreciation. Selling, general and administrative expense includes purchasing and receiving costs, inspection costs, warehousing costs, depreciation and amortization. DXP's gross margins may not be comparable to those of other entities, since some entities include all of the costs related to their distribution network in cost of sales and others like DXP exclude a portion of these costs from gross margin, including the costs in a line item, such as selling, general and administrative expense.

### *Income Taxes*

Deferred income tax assets and liabilities are computed for differences between the financial statement and income tax bases of assets and liabilities. Such deferred income tax asset and liability computations are based on enacted tax laws and rates applicable to periods in which the differences are expected to reverse. Valuation allowances are established to reduce deferred income tax assets to the amounts expected to be realized.

### *Stock-Based Compensation*

No future grants will be made under the Company's existing stock option plans. The Company currently uses restricted stock for share-based compensation programs. Compensation expense recognized for share-based compensation programs in the years ended December 31, 2009, 2010 and 2011 was \$1,555,000, \$973,000 and \$1,256,000, respectively. Unrecognized compensation expense under the Restricted Stock Plan was \$2,423,000 and \$4,051,000, respectively, at December 31, 2010 and 2011. As of December 31, 2011, the weighted average period over which the unrecognized compensation expense is expected to be recognized is 29.6 months.

### **Recent Accounting Pronouncements**

See Note 2 of the Notes to the Consolidated Financial Statements for discussion of recent accounting pronouncements.

### **Inflation**

We do not believe the effects of inflation have any material adverse effect on our results of operations or financial condition. We attempt to minimize inflationary trends by passing manufacturer price increases on to the customer whenever practicable.

### **ITEM 7A. Quantitative and Qualitative Disclosures about Market Risk**

Our market risk results primarily from volatility in interest rates. Our exposure to interest rate risk relates primarily to our debt portfolio. Using floating interest rate debt outstanding at December 31, 2011, a 100 basis point increase in interest rates would increase our annual interest expense by approximately \$1.1 million.

The table below provides information about the Company's market sensitive financial instruments and constitutes a forward-looking statement.

	Principal Amount By Expected Maturity (in thousands, except percentages)						Total	Fair Value
	2012	2013	2014	2015	2016	Thereafter		
Fixed Rate Long-term Debt	\$694	\$2,216	\$580	\$580	-	-	\$4,070	\$4,070
Average Interest Rate	5.2%	5.92%	5.00%	5.00%	-	-		
Floating Rate Long-term Debt	-	-	-	-	\$110,829	-	\$110,829	\$110,829
Average Interest Rate (1)					1.79%			
Total Maturities	\$694	\$2,216	\$580	\$580	\$110,829	-	\$114,899	\$114,899

(1) Assumes floating interest rates in effect at December 31, 2011.

**ITEM 8. Financial Statements and Supplementary Data**

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON FINANCIAL STATEMENTS**

To the Board of Directors and Shareholders of  
DXP Enterprises, Inc., and Subsidiaries  
Houston, Texas

We have audited the accompanying consolidated balance sheets of DXP Enterprises, Inc. and Subsidiaries as of December 31, 2010 and 2011, and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2011. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of DXP Enterprises, Inc., and Subsidiaries at December 31, 2010 and 2011, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011, in conformity with accounting principles generally accepted in the United States of America.

We were engaged to audit, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of DXP Enterprises, Inc. and Subsidiaries internal control over financial reporting as of December 31, 2011, based on criteria established in Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Our report dated March 9, 2012, expressed an unqualified opinion on the effectiveness of internal control over financial reporting.

Hein & Associates LLP  
Houston, Texas

March 9, 2012

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

To the Board of Directors and Shareholders of  
DXP Enterprises, Inc.  
Houston, Texas

We were engaged to audit DXP Enterprises, Inc.'s (the "Company") internal control over financial reporting based upon criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of DXP Enterprises, Inc. as of December 31, 2010 and 2011, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the years in the three year period ended December 31, 2011. Our report thereon dated March 9, 2012 expressed an unqualified opinion.

Hein & Associates LLP  
Houston, Texas

March 9, 2012



**MANAGEMENT'S REPORT  
ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

The Company has assessed the effectiveness of its internal control over financial reporting as of December 31, 2011 based on criteria established by *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO Framework”). The Company’s management is responsible for establishing and maintaining adequate internal controls over financial reporting. The Company’s independent registered public accountants that audited the Company’s financial statements as of December 31, 2011, have issued an attestation report on the Company’s internal control over financial reporting, which appears on page 31.

Internal control over financial reporting is a process designed by, or under the supervision of, a company’s principal executive and principal financial officers, and effected by the Company’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate.

The Company’s assessment of the effectiveness of its internal control over financial reporting included testing and evaluating the design and operating effectiveness of its internal controls with the participation of its principal executive and principal financial officers. In management’s opinion, the Company has maintained effective internal control over financial reporting as of December 31, 2011, based on criteria established in the COSO Framework.

/s/ David R. Little  
David R. Little  
Chairman of the Board and  
Chief Executive Officer

/s/ Mac McConnell  
Mac McConnell  
Senior Vice President/Finance and  
Chief Financial Officer

**DXP ENTERPRISES, INC., AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In Thousands, Except Share and Per Share Amounts)

	December 31,	
	2010	2011
<b>ASSETS</b>		
Current assets:		
Cash	\$ 770	\$ 1,507
Trade accounts receivable, net of allowances for doubtful accounts of \$3,540 in 2010 and \$6,202 in 2011	99,781	137,024
Inventories, net	75,887	93,901
Prepaid expenses and other current assets	2,550	2,230
Federal income tax receivable	402	-
Deferred income taxes	5,919	4,539
Total current assets	185,309	239,201
Property and equipment, net	14,917	16,911
Goodwill	84,942	101,764
Other intangibles, net of accumulated amortization of \$19,603 in 2010 and \$26,175 in 2011	32,236	43,194
Non-current deferred income taxes	2,289	1,588
Other assets	931	2,680
Total assets	\$ 320,624	\$ 405,338
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 10,930	\$ 694
Trade accounts payable	55,019	62,123
Outstanding checks related to acquisition	-	36,697
Accrued wages and benefits	11,826	12,713
Customer advances	5,824	3,767
Federal income taxes payable	-	2,409
Other accrued liabilities	9,284	16,055
Total current liabilities	92,883	134,458
Long-term debt, less current portion	103,621	114,205
Commitments and contingencies (Note 10)		
Shareholders' equity:		
Series A preferred stock, 1/10 <sup>th</sup> vote per share; \$1.00 par value; liquidation preference of \$100 per share (\$112 at December 31, 2011); 1,000,000 shares authorized; 1,122 shares issued and outstanding	1	1
Series B convertible preferred stock, 1/10 <sup>th</sup> vote per share; \$1.00 par value; \$100 stated value; liquidation preference of \$100 per share (\$1,500 at December 31, 2011); 1,000,000 shares authorized; 15,000 shares issued and outstanding	15	15
Common stock, \$0.01 par value, 100,000,000 shares authorized; 14,079,608 and 14,118,220 shares issued and outstanding, respectively.	140	141
Paid-in capital	72,616	75,204
Retained earnings	51,348	82,695
Accumulated other comprehensive income	-	64
Treasury stock, at cost (65,171 shares)	-	(1,445)
Total shareholders' equity	124,120	156,675
Total liabilities and shareholders' equity	\$ 320,624	\$ 405,338
The accompanying notes are an integral part of these consolidated financial statements.		

**DXP ENTERPRISES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In Thousands, Except Per Share Amounts)

	Years Ended December 31,		
	2009	2010	2011
Sales	\$ 583,226	\$ 656,202	\$ 807,005
Cost of sales	431,812	467,807	575,169
Gross profit	151,414	188,395	231,836
Selling, general and administrative expense	147,795	151,304	176,351
Goodwill and other intangibles impairment	52,951	-	-
Operating income (loss)	(49,332)	37,091	55,485
Other income	95	249	28
Interest expense	(5,245)	(5,208)	(3,518)
Income (loss) before provision for income taxes	(54,482)	32,132	51,995
Provision (benefit) for income taxes	(12,070)	12,751	20,558
Net income (loss)	(42,412)	19,381	31,437
Preferred stock dividend	(90)	(90)	(90)
Net income (loss) attributable to common shareholders	\$ (42,502)	\$ 19,291	\$ 31,347
Net income (loss)	\$ (42,412)	\$ 19,381	\$ 31,437
Gain from interest rate swap, net of income taxes	695	26	-
Gain on long-term investment, net of income taxes	-	-	64
Comprehensive income (loss)	\$ (41,717)	\$ 19,407	\$ 31,501
Per share and share amounts			
Basic earnings (loss) per common share	\$ (3.24)	\$ 1.40	\$ 2.19
Common shares outstanding	13,117	13,821	14,301
Diluted earnings (loss) per share	\$ (3.24)	\$ 1.32	\$ 2.08
Common and common equivalent shares	13,117	14,821	15,141

The accompanying notes are an integral part of these consolidated financial statements.

**DXP ENTERPRISES, INC.**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
**Years Ended December 31, 2009, 2010 and 2011**  
**(in Thousands, Except Share Amounts)**

	Series A Preferred Stock	Series B Preferred Stock	Common Stock	Paid-In Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Total
<b>BALANCES AT</b>								
DECEMBER 31, 2008	\$ 1	\$ 15	\$ 128	\$56,206	\$74,559	-	\$(721)	\$130,188
Dividends paid	-	-	-	-	(90)	-	-	(90)
Compensation expense for restricted stock	-	-	-	1,555	-	-	-	1,555
Net gain on interest rate swap for comprehensive income	-	-	-	-	-	-	695	695
Exercise of stock options and vesting of restricted stock for 71,897 shares of common stock	-	-	1	276	-	-	-	277
Net loss	-	-	-	-	(42,412)	-	-	(42,412)
<b>BALANCES AT</b>								
DECEMBER 31, 2009	\$ 1	\$ 15	\$ 129	\$58,037	\$32,057	-	\$(26)	\$90,213
Dividends paid	-	-	-	-	(90)	-	-	(90)
Compensation expense for restricted stock	-	-	-	973	-	-	-	973
Net gain on interest rate swap for comprehensive income	-	-	-	-	-	-	26	26
Issuance of 498,730 shares in connection with acquisitions	-	-	5	7,061	-	-	-	7,066
Issuance of 493,791 shares upon conversion of notes to common stock	-	-	5	6,206	-	-	-	6,211
Exercise of stock options and vesting of restricted stock for 149,886 shares of common stock	-	-	1	339	-	-	-	340
Net income	-	-	-	-	19,381	-	-	19,381
<b>BALANCES AT</b>								
DECEMBER 31, 2010	\$ 1	\$ 15	\$ 140	\$72,616	\$51,348	-	-	\$124,120
Dividends paid	-	-	-	-	(90)	-	-	(90)
Compensation expense for restricted stock	-	-	-	1,256	-	-	-	1,256
Net gain on long-term investment for comprehensive income	-	-	-	-	-	-	\$64	64
Issuance of 35,714 shares in connection with acquisitions	-	-	-	1,143	-	-	-	1,143
Vesting of restricted stock for 68,069 shares of common stock	-	-	1	189	-	-	-	190
Acquisition of 65,171 shares of common stock	-	-	-	-	-	\$(1,445)	-	(1,445)
Net income	-	-	-	-	31,437	-	-	31,437
<b>BALANCES AT</b>								
DECEMBER 31, 2011	\$ 1	\$ 15	\$ 141	\$75,204	\$82,695	\$(1,445)	\$64	\$156,675

The accompanying notes are an integral part of these consolidated financial statements.



**DXP ENTERPRISES, INC., AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In Thousands)

	Years Ended December 31		
	2009	2010	2011
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income (loss)	\$ (42,412)	\$ 19,381	\$ 31,437
Adjustments to reconcile net income (loss) to net cash provided by operating activities – net of acquisitions			
Goodwill and other intangible impairment	52,951	-	-
Precision inventory impairment	13,800	-	-
Depreciation	4,260	3,744	3,510
Amortization	7,216	5,824	6,572
Deferred income taxes	(16,678)	2,914	2,081
Stock-based compensation expense	1,555	973	1,256
Tax benefit related to exercise of stock options and vesting of restricted stock	(266)	(215)	(198)
Gain on sale of property and equipment	-	(188)	-
Changes in operating assets and liabilities, net of assets and liabilities acquired in business combinations:			
Trade accounts receivable	24,125	(14,528)	(21,548)
Inventories	32,716	2,028	(4,258)
Prepaid expenses and other assets	(1,665)	1,165	(2,617)
Accounts payable and accrued expenses	(24,027)	2,810	9,593
Net cash provided by operating activities	51,575	23,908	25,828
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Purchase of property and equipment	(1,593)	(1,184)	(4,096)
Purchase of businesses, net of cash acquired	(491)	(18,394)	(18,434)
Proceeds from the sale of property and equipment	16	1,428	-
Long-term investment	-	-	(1,572)
Net cash used in investing activities	(2,068)	(18,150)	(24,102)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from debt	133,716	141,216	224,307
Principal payments on revolving line of credit, long-term debt and notes payable	(186,763)	(148,798)	(223,959)
Dividends paid in cash	(90)	(90)	(90)
Proceeds from exercise of stock options	10	125	-
Purchase of treasury stock	-	-	(1,445)
Tax benefit related to exercise of stock options and vesting of restricted stock	266	215	198
Net cash used in financing activities	(52,861)	(7,332)	(989)
<b>INCREASE (DECREASE) IN CASH</b>	<b>(3,354)</b>	<b>(1,574)</b>	<b>737</b>
<b>CASH AT BEGINNING OF YEAR</b>	<b>5,698</b>	<b>2,344</b>	<b>770</b>
<b>CASH AT END OF YEAR</b>	<b>\$ 2,344</b>	<b>\$ 770</b>	<b>\$ 1,507</b>
<b>SUPPLEMENTAL DISCLOSURES:</b>			
Cash paid for --			
Interest	\$ 5,338	\$ 5,240	\$ 3,490
Income taxes	\$ 15,053	\$ 8,342	\$ 14,190
Income tax refunds	\$ 73	\$ 250	\$ 293

Purchase of businesses in 2010 excludes \$20 million of common stock, notes and convertible notes issued in connection with acquisitions during 2010. Proceeds from debt exclude \$6.3 million of convertible notes issued in connection with an acquisition in 2010 and converted to common stock in 2010. Purchases of businesses in 2011 excludes \$36.7 million in outstanding checks at December 31, 2011 and \$1.1 million of common stock issued in connection with an acquisition.

The accompanying notes are an integral part of these consolidated financial statements.

## DXP ENTERPRISES INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES:

DXP Enterprises, Inc., a Texas corporation, was incorporated on July 26, 1996, to be the successor to SEPCO Industries, Inc., DXP Enterprises, Inc. and its subsidiaries (“DXP” or the “Company”) is engaged in the business of distributing maintenance, repair and operating products, equipment and service to industrial customers. The Company is organized into three business segments: Service Centers, Supply Chain Services (“SCS”) and Innovative Pumping Solutions (“IPS”). See Note 14 for discussion of the business segments.

#### Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation. Certain prior year amounts have been reclassified to conform with the current year presentation.

#### Receivables and Credit Risk

Trade receivables consist primarily of uncollateralized customer obligations due under normal trade terms, which usually require payment within 30 days of the invoice date. However, these payment terms are extended in select cases and many customers do not pay within stated trade terms.

The Company has trade receivables from a diversified customer base located primarily in the Rocky Mountain, Northeastern, Midwestern, Southeastern and Southwestern regions of the United States. The Company believes no significant concentration of credit risk exists. The Company evaluates the creditworthiness of its customers' financial positions and monitors accounts on a regular basis, but generally does not require collateral. Provisions to the allowance for doubtful accounts are made monthly and adjustments are made periodically (as circumstances warrant) based upon management's best estimate of the collectability of all such accounts. The Company writes-off uncollectible trade accounts receivable when the accounts are determined to be uncollectible. No customer represents more than 10% of consolidated sales.

#### Inventories

Inventories consist principally of finished goods and are priced at lower of cost or market, cost being determined using the first-in, first-out (“FIFO”) method. Reserves are provided against inventories for estimated obsolescence based upon the aging of the inventories and market trends.

#### Property and Equipment

Assets are carried on the basis of cost. Provisions for depreciation are computed at rates considered to be sufficient to amortize the costs of assets over their expected useful lives. Depreciation of property and equipment is computed using the straight-line method. Maintenance and repairs of depreciable assets are charged against earnings as incurred. Additions and improvements are capitalized. When properties are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the accounts and gains or losses are credited or charged to earnings.

The principal estimated useful lives used in determining depreciation are as follows:

Buildings	20 – 39 years
Building improvements	10 – 20 years
Furniture, fixtures and equipment	3 – 10 years
Leasehold improvements	over the shorter of the estimated useful life or the term of the related lease

## Cash and Cash Equivalents

The Company's presentation of cash includes cash equivalents. Cash equivalents are defined as short-term investments with maturity dates of 90 days or less at time of purchase.

## Fair Value of Financial Instruments

A summary of the carrying and the fair value of financial instruments, excluding derivatives, at December 31, 2010 and 2011 is as follows (in thousands):

	2010		2011	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Cash	\$770	\$770	\$1,507	\$1,507
Marketable securities	-	-	\$1,679	\$1,679
Long-term debt, including current portion	114,551	114,551	\$114,899	\$114,899

The marketable securities are included in other assets on the consolidated balance sheet. The fair values were derived using quoted market prices. The carrying value of the long-term debt approximates fair value based upon the current rates and terms available to the Company for instruments with similar remaining maturities. The carrying amounts of accounts receivable and accounts payable approximate their fair values due to the short-term maturities of these instruments.

## Stock-Based Compensation

The Company uses restricted stock for share-based compensation programs. No future grants will be made under the Company's stock option plans. See Note 9 – Shareholders' Equity for additional information on stock-based compensation.

## Revenue Recognition

For binding agreements to fabricate tangible assets to customer specifications, the Company recognizes revenues using the percentage of completion method. Under this method, revenues are recognized as costs are incurred and include estimated profits calculated on the basis of the relationship between costs incurred and total estimated costs at completion. If at any time expected costs exceed the value of the contract, the loss is recognized immediately. Approximately \$9.8 million of revenues were recognized on contracts in process as of December 31, 2011. The typical time span of these contracts is approximately one to two years. At December 31, 2010 and 2011, \$2.8 million and \$7.4 million, respectively, of unbilled costs and estimated earnings are included in accounts receivable.

For other sales, the Company recognizes revenues when an agreement is in place, the price is fixed, title for product passes to the customer or services have been provided and collectability is reasonably assured. Revenues are recorded net of sales taxes.

The Company reserves for potential customer returns based upon the historical level of returns.

## Shipping and Handling Costs

The Company classifies shipping and handling charges billed to customers as sales. Shipping and handling charges paid to others are classified as a component of cost of sales.

## Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires the Company to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The significant estimates made by the Company in the accompanying financial statements relate to the valuation of intangibles, impairment analysis, reserves for accounts receivable collectability, inventory valuations, income taxes and self-insured medical and liability claims. Actual results could differ from those estimates and such differences could be material.



### *Self-insured Insurance and Medical Claims*

We generally retain up to \$100,000 of risk for each claim for workers compensation, general liability, automobile and property loss. We accrue for the estimated loss on the self-insured portion of these claims. The accrual is adjusted quarterly based upon reported claims information. The actual cost could deviate from the recorded estimate.

We generally retain up to \$200,000 of risk on each medical claim for our employees and their dependents. We accrue for the estimated outstanding balance of unpaid medical claims for our employees and their dependents. The accrual is adjusted monthly based on recent claims experience. The actual claims could deviate from recent claims experience and be materially different from the reserve.

The accrual for these claims at December 31, 2011 and 2010 was approximately \$2.4 million and \$1.8 million, respectively.

### *Impairment of Long-Lived Assets and Goodwill*

Goodwill represents a significant portion of our total assets. We review goodwill for impairment annually during our fourth quarter, or more frequently if certain impairment indicators arise under the provisions of authoritative guidance. We review goodwill at the reporting level unit, which is one level below an operating segment. In prior years we compared the carrying value of the net assets of each reporting unit to the net present value of estimated discounted anticipated cash flows of each reporting unit, discounted using a weighted average cost of capital rate. If the carrying value exceeded the net present value of estimated discounted anticipated cash flows, an impairment indicator existed and an estimate of the impairment loss was calculated. The fair value calculation included management views and multiple assumptions and estimates, including the projected cash flows and discount rates applied. Estimated cash flows were primarily based on projected revenues, operating costs and capital expenditures and were discounted based on comparable industry average rates for weighted average cost of capital. Changes in these assumptions and estimates could have resulted in goodwill impairment that could have materially adversely impacted our financial position or results of operations. Assets, liabilities, deferred taxes and goodwill for each reporting unit were determined using the balance sheets maintained for each reporting unit.

The following are examples of events or changes in circumstances that might suggest an asset or asset group should be tested for impairment:

- a. A significant decrease in the market price of a long-lived asset (asset group)
- b. A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition
- c. A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator
- d. A current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group)
- e. A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

Goodwill of \$101.8 million was primarily recorded in connection with the 17 acquisitions completed since 2004. Approximately \$16.0 million of goodwill is included in our Innovative Pumping Solutions segment. Approximately \$82.9 million of goodwill is included in the two reporting units for our Service Centers segment which are DXP and PFI. Approximately \$2.9 million of goodwill is included in our Supply Chain Services segment.

During 2011 the U.S. economy improved and oil prices increased, which led to improvements in our sales, margins and cash flows. Our sales and profitability improved throughout the year. We considered the impact of these changes in the economic and business climate as we performed our annual impairment assessments of goodwill as of December 31, 2011. In the fourth quarter of 2011, in conjunction with our December 31, 2011 goodwill assessment, we adopted new accounting guidance that allows an entity to first assess qualitative factors to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount and if a quantitative assessment should be performed. We performed a qualitative analysis and concluded it is more likely than not that the fair value of each reporting unit is not less than its carrying value and therefore, did not perform a quantitative analysis. Accordingly, the annual impairment assessment at December 31, 2011 indicated there is no impairment of goodwill. Qualitative factors considered during our assessment include the capital markets environment, U.S. economic conditions, industrial distribution industry competition and trends, oil and gas exploration and production industry trends, changes in our results of operations, the magnitude of the excess of fair value over the carrying amount of each reporting unit as determined in prior years' quantitative testing and other factors. We believe the fair value of our reporting units substantially exceeds the carrying value of our reporting units.

Long-lived assets, including property, plant and equipment and amortizable intangible assets comprise a significant portion of our total assets. We evaluate the carrying value of long-lived assets when impairment indicators are present or when circumstances indicate that impairment may exist under authoritative guidance. When events or changes in circumstances indicate that a long-lived asset carrying amount may not be recoverable, a long-lived asset or assets shall be grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Depending on the circumstances, this could be at a reporting unit or segment level. Estimates of future cash flows are generally used to test the recoverability of a long-lived asset (asset group), unless market information is available that would more clearly indicate the fair value of an asset or asset group. To the extent estimates of future cash flows are utilized, only the future cash flows (cash inflows less associated cash outflows) that are directly associated with, and that are expected to arise as a direct result of the use and eventual disposition of the asset (asset group) are utilized. Those estimates shall exclude interest charges that will be recognized as an expense when incurred. These impairment tests are heavily influenced by assumptions and estimates that are subject to change as additional information becomes available. We concluded DXP did not have an impairment of long-lived assets during 2011.

During 2009 there were significant declines in U.S. and global economies and in oil and natural gas prices which led to declines in our sales, margins and cash flows. Our sales and profitability declined throughout the year particularly in the fourth quarter. We considered the impact of these significant adverse changes in the economic and business climate as we performed our annual impairment assessment of goodwill as of December 31, 2009. The estimated fair values of our reporting units were negatively impacted by significant reductions in estimated cash flows for the income approach. Our goodwill impairment analysis led us to conclude that there was a significant impairment of goodwill for the PFI reporting unit and a significant impairment of goodwill for the DXP reporting unit and, accordingly, we recorded a non-cash charge of \$40.7 million to our operating results for the year ended December 31, 2009, for the impairment of our goodwill. In connection with the our 2009 goodwill impairment test we concluded the 2009 decline in the business and economic climate and significant reductions in estimated cash flows for the income approach resulted in a full impairment of the value of customer relationships for the PFI reporting unit. This \$12.3 million expense is included in the "Goodwill and other intangible impairment" expense on the Consolidated Statements of Operations. The PFI reporting unit is part of the Service Centers segment.

### ***Goodwill and Other Intangible Assets***

The \$24.2 million increase in goodwill and the \$12.3 million increase in other intangibles acquired during 2010 results from recording the goodwill and other intangibles associated with the acquisitions of the assets of Quadna, Inc. ("Quadna") and D&F Distributors, Inc. ("D&F"). The \$0.2 million increase in goodwill for payment of earn out in 2010 relates to contingent purchase price for the 2008 acquisition of Falcon Pump. The \$15.8 million increase in goodwill and the \$17.5 million increase in other intangibles acquired during 2011 results from recording the goodwill and other intangibles associated with the acquisitions of the assets of KC and CW Rod. The \$1.0 million increase in goodwill for payment of earn out in 2011 relates to contingent purchase price for the 2007 acquisition of Indian Fire and Safety. Other intangible assets are generally amortized on a straight line basis over the useful lives of the assets. Approximately \$82.9 million of goodwill and \$27.9 million of other intangible assets pertain to the Service Centers segment. Approximately \$16.0 million of goodwill and \$2.6 million of other intangible assets pertain to the IPS segment. Approximately \$2.9 million of goodwill and approximately \$12.7 million of other intangible assets pertain to the Supply Chain Services segment.

The changes in the carrying amount of goodwill and other intangibles for 2010 and 2011 are as follows (in thousands):

	Total	Goodwill	Other Intangibles
Balance as of December 31, 2009	\$ 86,269	\$ 60,542	\$ 25,727
Payment of earn out	200	200	-
Acquired during the year	36,533	24,200	12,333
Amortization	(5,824)	-	(5,824)
Balance as of December 31, 2010	\$117,178	\$ 84,942	\$ 32,236
Payment of earn out	1,000	1,000	-
Acquired during the year	33,352	15,822	17,530
Amortization	(6,572)	-	(6,572)
Balance as of December 31, 2011	\$144,958	\$101,764	\$43,194

The changes in the carrying amount of goodwill by segment for 2010 and 2011 are as follows (in thousands):

	Total	Service Centers	SCS	IPS
Balance as of December 31, 2009	\$ 60,542	\$ 52,100	-	\$ 8,442
Payment of earn out	200	200	-	-
Acquired during the year	24,200	16,662	-	7,538
Balance as of December 31, 2010	\$ 84,942	\$ 68,962	-	\$ 15,980
Payment of earn out	1,000	1,000	-	-
Acquired during the year	15,822	12,897	2,925	-
Balance as of December 31, 2011	\$101,764	\$82,859	\$2,925	\$ 15,980

A summary of amortizable other intangible assets follows (in thousands):

	As of December 31, 2010		As of December 31, 2011	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Vendor agreements	\$ 2,496	\$ (831)	\$ 2,496	\$ (956)
Customer relationships	47,363	(17,237)	64,262	(23,508)
Non-compete agreements	1,980	(1,535)	2,611	(1,711)
Total	\$ 51,839	\$ (19,603)	\$ 69,369	\$ (26,175)

The estimated future annual amortization of intangible assets for each of the next five years follows (in thousands):

2012	\$ 8,531
2013	\$ 7,804
2014	\$ 7,529
2015	\$ 6,057
2016	\$ 4,851
Thereafter	\$ 8,422

The weighted average useful lives of acquired intangibles related to vendor agreements, customer relationships, and non-compete agreements are 20 years, 9.0 years and 4.3 years, respectively, at December 31, 2011. The weighted average useful life of amortizable intangible assets in total is 9.3 years at December 31, 2011.

Of the \$145.0 million net balance of goodwill and other intangibles at December 31, 2011, \$131.0 million is expected to be deductible for tax purposes.

### ***Purchase Accounting***

DXP estimates the fair value of assets, including property, machinery and equipment and their related useful lives and salvage values, intangibles and liabilities when allocating the purchase price of an acquisition.

### ***Cost of Sales and Selling, General and Administrative Expense***

Cost of sales includes product and product related costs, inbound freight charges, internal transfer costs and depreciation. Selling, general and administrative expense includes purchasing and receiving costs, inspection costs, warehousing costs, depreciation and amortization. DXP's gross margins may not be comparable to those of other entities, since some entities include all of the costs related to their distribution network in cost of sales and others like DXP exclude a portion of these costs from gross margin, including the costs in a line item, such as selling, general and administrative expense.

### ***Income Taxes***

The Company utilizes the asset and liability method of accounting for income taxes. Deferred income tax assets and liabilities are computed for differences between the financial statement and income tax bases of assets and liabilities. Such deferred income tax asset and liability computations are based on enacted tax laws and rates applicable to periods in which the differences are expected to reverse. Valuation allowances are established to reduce deferred income tax assets to the amounts expected to be realized.

### ***Comprehensive Income***

Comprehensive income includes net income, foreign currency translation adjustments, unrecognized gains (losses) on postretirement and other employment-related plans, changes in fair value of certain derivatives, and unrealized gains and losses on certain investments in debt and equity securities. The Company's other comprehensive (loss) income is comprised of changes in the value of an interest rate swap and changes in the market value of an investment with quoted market prices in an active market for identical instruments.

### ***Accounting for Uncertainty in Income Taxes***

In July 2006, the Financial Accounting Standards Board ("FASB") issued authoritative guidance which requires that a position taken or expected to be taken in a tax return be recognized in the financial statements when it is more likely than not (i.e. a likelihood of more than fifty percent) that the position would be sustained upon examination by tax authorities. A recognized tax position is then measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction and various states. With few exceptions, the Company is no longer subject to U. S. federal, state and local tax examination by tax authorities for years prior to 2007. The Company's policy is to recognize interest related to unrecognized tax benefits as interest expense and penalties as operating expenses. Accrued interest is insignificant and there are no penalties accrued at December 31, 2011. The Company believes that it has appropriate support for the income tax positions taken and to be taken on its tax returns and that its accruals for tax liabilities are adequate for all open years based on an assessment of many factors including past experience and interpretations of tax law applied to the facts of each matter.

## **2. RECENT ACCOUNTING PRONOUNCEMENTS:**

In May 2009, the FASB issued authoritative guidance which establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before the financial statements are issued or are available to be issued. The authoritative guidance provides guidance on the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. The Company adopted the authoritative guidance during the second quarter of 2009, and its application had no impact on the Company's consolidated condensed financial statements. The Company evaluated subsequent events through the date this report was filed with the SEC.

In October 2009, the FASB issued new standards for revenue recognition with multiple deliverables. These new standards impact the determination of when the individual deliverables included in a multiple-element arrangement may be treated as separate units for accounting purposes. Additionally, these new standards modify the manner in which the arrangement consideration is allocated across the separately identified deliverables by no longer permitting the residual method of allocating arrangement consideration. These new standards were adopted in the first quarter of 2011. The adoption of these new standards did not significantly impact our consolidated financial statements.

In September 2011, the FASB issued an accounting standards update with new guidance on annual goodwill impairment testing. The standards update allows an entity to first assess qualitative factors to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If based on its qualitative assessment an entity concludes it is more likely than not that the fair value of a reporting unit is less than its carrying amount, quantitative impairment testing is required. However, if an entity concludes otherwise, quantitative impairment testing is not required. The standards update is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011, with early adoption permitted. We have elected to early adopt the standards update effective December 31, 2011. We completed a qualitative assessment of goodwill at December 31, 2011 and concluded it is more likely than not that the fair value of each reporting unit is not less than its carrying value and, therefore, did not perform a quantitative assessment.

### 3. ACQUISITIONS

All of the Company's acquisitions have been accounted for using the purchase method of accounting. Revenues and expenses of the acquired businesses have been included in the accompanying consolidated financial statements beginning on their respective dates of acquisition. The allocation of purchase price to the acquired assets and liabilities is based on estimates of fair market value and may be prospectively revised if and when additional information the Company is awaiting concerning certain asset and liability valuations is obtained, provided that such information is received no later than one year after the date of acquisition. Any contingent purchase price on acquisitions completed before January 1, 2009 will increase goodwill when paid.

During 2009 the initial purchase price allocation for the 2008 acquisitions was adjusted to allocate \$2.5 million of purchase price to goodwill. These increases in goodwill primarily related to reducing the value of inventories and fixed assets for the acquisitions completed during 2008. During 2009 the Company recognized an impairment charge of \$53.0 million for goodwill and other intangibles associated with the Service Centers and SCS segments. During 2010 the Company paid \$0.2 million in contingent purchase price related to the acquisition of Falcon Pump. During 2011 the Company paid \$1.0 million in contingent purchase price related to the acquisition of Indian Fire & Safety in 2007.

On April 1, 2010, DXP acquired substantially all the assets of Quadna, Inc. ("Quadna"). The purchase price of approximately \$25.0 million (net of \$3.0 million of acquired cash) consisted of \$11 million paid in cash, \$10 million in the form of convertible promissory notes bearing interest at a rate of 10% and approximately \$4.0 million in the form of 343,337 shares of DXP common stock. On April 9, 2010, \$4.5 million principal amount of the convertible promissory notes, along with accrued interest, were converted into 376,417 shares of DXP's common stock. On August 18, 2010, \$3.7 million of the convertible promissory notes were paid off using funds obtained from DXP's credit facility and \$1.8 million of the convertible promissory notes were converted to 117,374 shares of DXP common stock. The \$11 million cash portion of the purchase price was funded by borrowings under DXP's existing credit facility. DXP completed this acquisition to expand its pump business in the Western U.S. Goodwill of \$18.8 million was recognized for this acquisition and is calculated as the excess of the consideration transferred over the net assets recognized and represents the future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. It specifically includes the expected synergies and other benefits that we believe will result from combining the operations of Quadna with the operations of DXP and any intangible assets that do not qualify for separate recognition such as the assembled workforce.

On November 30, 2010, DXP acquired substantially all of the assets of D&F Distributors, Inc. ("D&F"). The purchase price of \$13.4 million consisted of approximately \$7.4 million paid in cash, approximately \$2.9 million in the form of promissory notes bearing interest at a rate of 5%, and approximately \$3.1 million in the form of 155,393 shares of DXP common stock. The cash portion of the purchase price was funded by borrowings under DXP's existing credit facility. DXP completed this acquisition to expand its pump business in Indiana, Kentucky, Tennessee and Ohio. Goodwill of \$5.4 million was recognized for this acquisition and is calculated as the excess of the consideration transferred over the net assets recognized and represents the future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. It specifically includes the expected synergies and other benefits that we believe will result from combining the operations of D&F with the operations of DXP and any intangible assets that do not qualify for separate recognition such as the assembled workforce.

On October 10, 2011, DXP acquired substantially all of the assets of Kenneth Crosby ("KC"). DXP acquired this business to expand DXP's geographic presence in the eastern U.S. and strengthen DXP's metal working offering. DXP paid approximately \$16 million for KC, which was borrowed under our existing credit facility. Goodwill of \$5.8 million was recognized for this acquisition and is calculated as the excess of the consideration transferred over the net assets recognized and represents the future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. It specifically includes the expected synergies and other benefits that we believe will result from combining the operations of KC with the operations of DXP and any intangible assets that do not qualify for separate recognition such as the assembled workforce.

On December 30, 2011, DXP acquired substantially all of the assets of C.W. Rod Tool Company ("CW Rod"). DXP acquired this business to strengthen DXP's metal working offering. DXP paid approximately \$1.1 million of DXP's common stock (35,714 shares) and approximately \$42 million in cash for CW Rod, which was borrowed during 2011 and 2012 under our recently expanded credit facility. The \$42 million of cash paid for CW Rod includes \$36.7 million paid in the form of checks which did not clear our bank until 2012. Goodwill of \$10.0 million was recognized for this acquisition and is calculated as the excess of the consideration transferred over the net assets recognized and represents the future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. It specifically includes the expected synergies and other benefits that we believe will result from combining the operations of CW Rod with the operations of DXP and any intangible assets that do not qualify for separate recognition such as the assembled workforce.

The value assigned to the non-compete agreements and customer relationships for Quadna, D&F, KC and CW Rod were determined by discounting the estimated cash flows associated with non-compete agreements and customer relationships as of the date the acquisition was consummated. The estimated cash flows were based on estimated revenues net of operating expenses and net of capital charges for assets that contribute to the projected cash flow from these assets. The projected revenues and operating expenses were estimated based on management estimates. Net capital charges for assets that contribute to projected cash flow were based on the estimated fair value of those assets. Discount rates of 17.0% to 17.2% were deemed appropriate for valuing these assets and were based on the risks associated with the respective cash flows taking into consideration the acquired company's weighted average cost of capital.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed during 2011 in connection with the acquisitions described above (in thousands):

Cash	3
Accounts Receivable	15,696
Inventory	13,754
Property and equipment	1,415
Goodwill and intangibles	33,352
Other assets	142
Assets acquired	64,362
Current liabilities assumed	(5,873)
Non-current liabilities assumed	-
Net assets acquired	58,489

The pro forma unaudited results of operations for the Company on a consolidated basis for the years ended December 31, 2009 and 2010, assuming the acquisition of businesses completed in 2010 were consummated as of January 1, 2009 follows:

	Years Ended December 31,	
	2009	2010
	(Unaudited)	
	In Thousands, except for per share data	
Net sales	\$653,175	\$ 689,675
Net (loss) income	\$(39,967)	\$ 20,843
Per share data		
Basic Earnings	\$(3.04)	\$1.50
Diluted Earnings	\$(3.04)	\$1.42

The pro forma unaudited results of operations for the Company on a consolidated basis for the years ended December 31, 2010 and 2011, assuming the acquisition of businesses completed in 2011 were consummated as of January 1, 2010 follows:

	Years Ended December 31,	
	2010	2011
	(Unaudited)	
	In Thousands, except for per share data	
Net sales	\$ 778,267	\$ 903,240
Net income	\$ 22,898	\$ 35,511
Per share data		
Basic Earnings	\$1.65	\$2.48
Diluted Earnings	\$1.56	\$2.35

#### 4. PRECISION INVENTORY IMPAIRMENT IN 2009

During 2009 the Company determined that the value of inventory acquired in connection with the acquisition of Precision on September 10, 2007, was overstated by \$13.8 million because the inventory was obsolete, expired, old and/or slow moving. The \$13.8 million charge to reduce the value of this inventory is included in cost of sales for 2009.

## 5. INVENTORIES:

The carrying values of inventories are as follows:

	December 31,	
	2010	2011
	(in Thousands)	
Finished goods	\$ 94,270	\$102,645
Work in process	2,466	5,246
Obsolescence reserve	(20,849)	(13,990)
Inventories	\$ 75,887	\$ 93,901

## 6. PROPERTY AND EQUIPMENT:

Property and equipment consisted of the following:

	December 31,	
	2010	2011
	(in Thousands)	
Land	\$ 1,652	\$ 1,652
Buildings and leasehold improvements	7,508	7,956
Furniture, fixtures and equipment	23,700	28,756
	32,860	38,364
Less – Accumulated depreciation	(17,943)	(21,453)
Total Property and Equipment	\$ 14,917	\$ 16,911

## 7. LONG-TERM DEBT:

Long-term debt consisted of the following:

	December 31,	
	2010	2011
	(in Thousands)	
Line of credit	\$ 83,664	\$110,828
Term loan, payable in quarterly installments of \$2.5 million through August 2013	25,500	-
Unsecured notes payable to individuals, at variable rates (1.0% to 1.75% at December 31, 2010) payable in monthly and quarterly installments through November 2011	630	-
Unsecured subordinated notes payable in quarterly installments at 5% through November 2015	2,900	2,320
Mortgage loan payable to financial institution, 6.25% collateralized by real estate, payable in monthly installments through January 2013	1,857	1,751
	114,551	114,899
Less: Current portion	(10,930)	(694)
Total Long-term Debt	\$ 103,621	\$114,205

On August 28, 2008, DXP entered into a credit agreement with Wells Fargo Bank, National Association, as lead arranger and administrative agent for the lenders (the "Facility"). The Facility was amended on March 15, 2010. The March 15, 2010 amendment to the Facility significantly increased the interest rates and commitment fees applicable at various leverage ratios from levels in effect before March 15, 2010. Effective July 25, 2011 DXP entered into a Second Amendment to the Credit Facility with Wells Fargo Bank, National Association. The Second Amendment reduced interest rates; deleted the Senior Leverage Ratio; increased the maximum leverage ratio to not greater than 4.00 to 1.00 as of the last day of each quarter; allows DXP to purchase, redeem and retire equity for aggregate consideration not exceeding \$5.0 million; and modified covenants to increase DXP's ability to complete future acquisitions. The term loan was repaid using funds from the \$150 million line of credit. Effective December 30, 2011 DXP entered into a Third Amendment to the Facility. The Third Amendment increased the maximum amount of the Facility from \$150 million to \$200 million. The Facility provides the option of interest at LIBOR plus a margin ranging from 1.25% to 2.75%, or prime plus a margin of minus 0.25% to 1.25%. Commitment fees of 0.15% to 0.40% per annum are payable on the portion of the Facility capacity not in use for borrowings or letters of credit at any given time. The Facility expires on July 25, 2016. The Facility



consists of a revolving credit facility that provides a \$200 million line of credit to the Company. The Facility contains financial covenants defining various financial measures and levels of these measures with which the Company must comply. Covenant compliance is assessed as of each quarter end and certain month ends for the asset test. The asset test is defined under the Facility as the sum of 90% of the Company's net accounts receivable, 65% of net inventory, and 50% of the net book value of non real estate property and equipment. The Company's borrowing and letter of credit capacity under the revolving credit portion of the Facility at any given time is \$200 million less borrowings under the revolving credit portion of the facility and letters of credit outstanding, subject to the asset test described above.

On December 31, 2011, the LIBOR based rate of the Facility was LIBOR plus 1.5%, the prime based rate of the Facility was prime plus 0.0% and the commitment fee was 0.2%. At December 31, 2011, \$110.5 million was borrowed under the Facility at a weighted average interest rate of approximately 1.78% under the LIBOR options and \$0.3 million was borrowed at 3.25% under the prime option. Borrowings under the Facility are secured by all of the Company's accounts receivable, inventory, general intangibles and non real estate property and equipment. At December 31, 2011, we had \$78.2 million available for borrowing under the Facility.

The Facility's principal financial covenants include:

**Fixed Charge Coverage Ratio** –The Facility requires that the Fixed Charge Coverage Ratio for the 12 month period ending on the last day of each quarter be not less than 1.50 to 1.0 with "Fixed Charge Coverage Ratio" defined as the ratio of (a) EBITDA for the 12 months ending on such date minus cash taxes, minus Capital Expenditures for such period (excluding acquisitions) to (b) the aggregate of interest expense paid in cash, scheduled principal payments in respect of long-term debt and current portion of capital leases for such 12-month period, determined in each case on a consolidated basis for DXP and its subsidiaries. At December 31, 2011, the Company's Fixed Charge Coverage Ratio was 14.2.

**Leverage Ratio** – The Facility requires that the Company's Leverage Ratio, determined at the end of each fiscal quarter, not exceed 4.0 to 1.0 as of the last day of each quarter. The Leverage Ratio is defined as the outstanding Indebtedness divided by EBITDA for the 12 months then ended. At December 31, 2011, the Company's Leverage Ratio was 1.49 to 1.00. Indebtedness is defined under the Facility for financial covenant purposes as: (a) all obligations of DXP for borrowed money including but not limited to senior bank debt, senior notes and subordinated debt; (b) capital leases; (c) issued and outstanding letters of credit; and (d) contingent obligations for funded indebtedness.

The following is the computation of the Leverage Ratio as of December 31, 2011 (in thousands, except for ratios):

<u>For the Year ended December 31, 2011</u>	<u>Leverage Ratio</u>
Income before taxes	\$ 51,995
Interest expense	3,518
Depreciation and amortization	10,082
Stock compensation expense	1,256
Pro forma acquisition EBITDA	10,871
Reduction of closed location accrual	(123)
<sup>(A)</sup> Defined EBITDA	\$ 77,599
<u>As of December 31, 2011</u>	
Total long-term debt	\$114,899
Letters of credit outstanding	951
<sup>(B)</sup> Defined indebtedness	\$115,850
Leverage Ratio (B)/(A)	1.49

EBITDA as defined under the Facility for financial covenant purposes means, without duplication, for any period the consolidated net income (excluding any extraordinary gains or losses) of DXP plus, to the extent deducted in calculating consolidated net income, depreciation, amortization, other non-cash items and non-recurring items (including, without limitation, impairment charges, asset write-offs and accruals in respect of closed locations), interest expense and tax expense for taxes based on income and minus, to the extent added in calculating consolidated net income, any non-cash items and non-recurring items; provided that, if DXP acquires the equity interests or assets of any person during such period under circumstances permitted under the Facility, EBITDA shall be adjusted to give pro forma effect to such acquisition assuming that such transaction had occurred on the first day of such period and provided further that, if DXP divests the equity interests or assets of any person during such period under circumstances permitted under the Facility, EBITDA shall be adjusted to give pro forma effect to such divestiture assuming that such transaction had occurred on the first day of such period. Add-backs allowed pursuant to Article 11, Regulation S-X, of the Securities Act of 1933, as amended, will also be included in the calculation of EBITDA.

The Facility prohibits the payment of cash dividends on the Company's common stock.

The maturities of long-term debt for the next five years and thereafter are as follows (in thousands):

2012	694
2013	2,216
2014	580
2015	580
2016	110,829
Thereafter	-

## 8. INCOME TAXES:

The provision for income taxes consists of the following:

	Years Ended December 31,		
	2009	2010	2011
	(in Thousands)		
Current -			
Federal	\$ 3,849	\$ 7,952	\$15,401
State	759	1,885	3,076
	4,608	9,837	18,477
Deferred	(16,678)	2,914	2,081
	\$(12,070)	\$12,751	\$20,558

The difference between income taxes computed at the federal statutory income tax rate (35%) and the provision for income taxes is as follows:

	Years Ended December 31,		
	2009	2010	2011
	(in Thousands)		
Income taxes computed at federal statutory rate	\$(19,069)	\$ 11,246	\$18,198
State income taxes, net of federal benefit	492	1,225	1,999
Nondeductible impairment expense	6,852	-	-
Other	(345)	280	361
	\$(12,070)	\$ 12,751	\$20,558

The net current and noncurrent components of deferred income tax balances are as follows:

	December 31,	
	2010	2011
	(in Thousands)	
Net current assets	\$ 5,919	\$ 4,539
Net non-current assets	2,289	1,588
Net non-current liabilities	-	-
Net assets (liabilities)	\$ 8,208	\$ 6,127

Deferred tax liabilities and assets were comprised of the following:

	December 31,	
	2010	2011
	(in Thousands)	
Deferred tax assets:		
Goodwill	\$ 4,871	\$3,575
Allowance for doubtful accounts	1,230	2,077
Inventories	3,615	1,707
Accruals	740	889
Other	180	229
Total deferred tax assets	10,636	8,477
Less valuation allowance	-	-
Total deferred tax assets, net of valuation allowance	10,636	8,477
Deferred tax liabilities		
Intangibles	(907)	(786)
Property and equipment	(1,421)	(1,421)
Other	(100)	(143)
Net deferred tax asset (liability)	\$ 8,208	\$6,127

## 9. SHAREHOLDERS' EQUITY:

### Preferred Stock

The holders of Series A preferred stock are entitled to one-tenth of a vote per share on all matters presented to a vote of shareholders generally, voting as a class with the holders of common stock, and are not entitled to any dividends or distributions other than in the event of a liquidation of the Company, in which case the holders of the Series A preferred stock are entitled to a \$100 liquidation preference per share. Each share of the Series B convertible preferred stock is convertible into 28 shares of common stock and a monthly dividend per share of \$.50. The holders of the Series B convertible stock are also entitled to a \$100 liquidation preference per share after payment of the distributions to the holders of the Series A preferred stock and to one-tenth of a vote per share on all matters presented to a vote of shareholders generally, voting as a class with the holders of the common stock. Of the 10,000,000 authorized shares of Preferred Stock, 8,000,000 shares are available for future designation.

### Restricted Stock

Under a restricted stock plan approved by DXP's shareholders in July 2005 (the "Restricted Stock Plan"), directors, consultants and employees may be awarded shares of DXP's common stock. The shares of restricted stock granted to employees as of December 31, 2011, vest 20% each year for five years after the date of grant, 33.3% each year for three years after the grant date or 10% each year for ten years after the grant date. The shares of restricted stock granted to non-employee directors of DXP vest 100% one year after the grant date. The Restricted Stock Plan provides for a grant to each non-employee director of DXP, consisting of the number of whole shares calculated by dividing \$75,000 by the closing price of the common stock on the July 1 of the award year. The fair value of restricted stock awards is measured based upon the closing prices of DXP's common stock on the grant dates and is recognized as compensation expense over the vesting period of the awards.

The following table provides certain information regarding the shares authorized, granted and available for future grant under the Restricted Stock Plan at December 31, 2011

Number of shares authorized for grants	600,000
Number of shares granted	611,954
Number of shares forfeited	60,738
Number of shares available for future grants	48,784
Weighted-average grant price of granted shares	\$17.19

Changes in non-vested restricted stock for 2009, 2010 and 2011 were as follows:

	Number Of Shares	Weighted Average Grant Price
Non-vested at December 31, 2009	223,448	\$15.29
Granted	93,781	\$15.92
Forfeited	(37,287)	\$17.08
Vested	(99,886)	\$12.32
Non-vested at December 31, 2010	180,056	\$16.15
Granted	117,292	\$24.79
Forfeited	(687)	\$17.29
Vested	(68,069)	\$14.40
Non-vested at December 31, 2011	228,592	\$21.10

Compensation expense recognized for restricted stock in the years ended December 31, 2009, 2010 and 2011 was \$1,555,000, \$973,000 and 1,256,000 respectively. Related income tax benefits recognized in earnings were approximately \$622,000, \$389,000 and \$502,000 in 2009, 2010 and 2011, respectively. Unrecognized compensation expense under the Restricted Stock Plan was \$2,423,000 and \$4,051,000, respectively, at December 31, 2010 and 2011. As of December 31, 2011, the weighted average period over which the unrecognized compensation expense is expected to be recognized is 29.6 months.

## Stock Options

The DXP Enterprises, Inc. 1999 Employee Stock Option Plan, the DXP Enterprises, Inc. Long-Term Incentive Plan and the DXP Enterprises, Inc. Director Stock Option Plan authorized the grant of options to purchase 1,800,000, 660,000 and 400,000 shares of the Company's common stock, respectively. In accordance with these stock option plans that were approved by the Company's shareholders, options were granted to key personnel for the purchase of shares of the Company's common stock at prices not less than the fair market value of the shares on the dates of grant. Most options could be exercised not earlier than 12 months nor later than 10 years from the date of grant. No future grants will be made under these stock option plans. Activity during 2009, 2010 and 2011 with respect to the stock options follows:

	Shares	Options Price Per Share	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding and exercisable at December 31, 2008	58,000	\$1.25 - \$3.36	\$2.33	\$ 712,000
Exercised	(8,000)	\$1.25	\$1.25	\$ 85,000
Outstanding and exercisable at December 31, 2009	50,000	\$1.25 - \$3.36	\$2.50	\$ 529,000
Exercised during 2010	(50,000)	\$1.25 - \$3.36	\$2.50	\$ 489,000
Outstanding and exercisable at December 31, 2010 and 2011	-	-	-	-

Cash received from stock options exercised during 2009, 2010 and 2011 was \$10,000, \$125,000 and zero, respectively. The weighted average remaining contractual life was 4.0 years at December 31, 2009.

## Certain Equity Related Transactions

During 2009 and 2010, employees and directors of DXP exercised non-qualified stock options. DXP received a tax deduction for the amount of the difference between the exercise price and the fair market value of the shares recognized as income by the individuals exercising the options. The after tax benefit of the tax deduction is accounted for as an increase in paid-in capital.

## Earnings Per Share

Basic earnings per share is computed based on weighted average shares outstanding and excludes dilutive securities. Diluted earnings per share is computed including the impacts of all potentially dilutive securities. The following table sets forth the computation of basic and diluted earnings per share for the years ended December 31, 2009, 2010 and 2011.

	2009	2010	2011
	(in Thousands, except per share amounts)		
<b>Basic:</b>			
Basic weighted average shares outstanding	13,117	13,821	14,301
Net income (loss)	\$(42,412)	\$ 19,381	\$ 31,437
Convertible preferred stock dividend	(90)	(90)	(90)
Net income (loss) attributable to common shareholders	\$(42,502)	\$ 19,291	\$ 31,347
Per share amount	\$(3.24)	\$1.40	\$2.19
<b>Diluted:</b>			
Basic weighted average shares outstanding	13,117	13,821	14,301
Net effect of dilutive stock options based on the treasury stock method	-	7	-
Assumed conversion of convertible notes	-	153	-
Assumed conversion of convertible preferred stock	-	840	840
Total common and common equivalent shares outstanding	13,117	14,821	15,141
Net income (loss) attributable to common shareholders	\$(42,502)	\$ 19,291	\$ 31,347
Interest on convertible notes, net of income taxes	-	142	-
Convertible preferred stock dividend	-	90	90
Net income (loss) for diluted earnings per share	\$(42,502)	\$ 19,523	\$ 31,437
Per share amount	\$(3.24)	\$1.32	\$2.08

## 10. COMMITMENTS AND CONTINGENCIES:

The Company leases equipment, automobiles and office facilities under various operating leases. The future minimum rental commitments as of December 31, 2011, for non-cancelable leases are as follows (in thousands):

2012	\$11,191
2013	8,765
2014	9,207
2015	5,816
2016	2,938
2017	1,331
Thereafter	5,462

Rental expense for operating leases was \$12,201,000, \$12,495,000 and \$14,151,000 for the years ended December 31, 2009, 2010 and 2011, respectively.

In 2004, DXP and DXP's vendor of fiberglass reinforced pipe were sued in Louisiana by a major energy company regarding the failure of Bondstrand PSX JFC pipe, a recently introduced type of fiberglass reinforced pipe which had been installed on four energy production platforms. Plaintiff alleges negligence, breach of contract, warranty and that damages exceed \$20 million. DXP believes the failures were not caused by work performed by DXP. DXP intends to vigorously defend these claims. DXP's insurance carrier has agreed, under a reservation of rights to deny coverage, to provide a defense against these claims. The maximum amount of our insurance coverage, if any, is \$6 million. Under certain circumstance, our insurance may not cover this claim. DXP currently believes the claim is without merit and the possibility of the claim having a material adverse effect on our business, financial condition, cash flows or results of operations is remote.

From time to time, the Company is a party to various legal proceedings arising in the ordinary course of business. While DXP is unable to predict the outcome of these lawsuits, it believes that the ultimate resolution will not have, either individually or in the aggregate, a material adverse effect on DXP's consolidated financial position, cash flows, or results of operations.

#### **11. EMPLOYEE BENEFIT PLANS:**

The Company offers a 401(K) plan which is eligible to substantially all employees. During 2011, part of 2010 and part of 2009, the Company elected to match employee contributions at a rate of 50 percent of up to 4 percent of salary deferral. During 2009 the Company stopped matching employee contributions. During 2010 the Company resumed matching of employee contributions. The Company contributed \$823,000, \$540,000 and \$1,537,000 to the 401(K) plan in the years ended December 31, 2009, 2010 and 2011, respectively.

#### **12. FAIR VALUE OF FINANCIAL ASSETS AND LIABILITIES**

Effective January 1, 2008, we adopted authoritative guidance for financial assets and liabilities measured on a recurring basis. This authoritative guidance applies to all financial assets and financial liabilities that are being measured and reported on a fair value basis. Fair value, as defined in the authoritative guidance, is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The authoritative guidance affects the fair value measurement of marketable securities and an interest rate swap to which the Company was a party, which must be classified in one of the following categories:

##### *Level 1 Inputs*

These inputs come from quoted prices (unadjusted) in active markets for identical assets or liabilities.

##### *Level 2 Inputs*

These inputs are other than quoted prices that are observable for an asset or liability. These inputs include: quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means.

##### *Level 3 Inputs*

These are unobservable inputs for the asset or liability which require the Company's own assumptions.

Financial assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurement. Our assessment of the significance of a particular input to the fair value measurement requires judgment and may affect the valuation of the fair value of assets and liabilities and their placement within the fair value hierarchy levels.

The following presents the changes in Level 3 liabilities for 2009, 2010, and 2011 (in thousands):

	2009	2010	2011
Fair value at January 1,	\$ ( 1,202)	\$ ( 42)	-
Realized and unrealized gains included in other comprehensive income	1,160	42	-
Fair value at December 31,	\$ ( 42)	\$ -	-

During 2011, the Company paid \$1,572,000 for an investment with quoted market prices in an active market for identical instruments. The \$106,000 increase in the market value of this investment was included in other comprehensive income in 2011.

To hedge a portion of our floating rate debt, as of January 10, 2008, DXP entered into an interest rate swap agreement with the lead bank of the Facility. Through January 11, 2010, this interest rate swap effectively fixed the interest rate on \$40 million of floating rate LIBOR borrowings under the Facility at one-month LIBOR of 3.68% plus the margin in effect under the Facility. Amounts paid or received in connection with the swap were included in interest expense. This swap was designated as a cash flow hedging instrument. Changes in the fair value of the swap were included in other comprehensive income. See Note 13 "Other Comprehensive Income" for gain, net of income taxes, on the interest rate swap.

The Company measures certain non-financial assets and liabilities, including long-lived assets, at fair value on a non-recurring basis. In 2009, the Company recorded a charge of \$53.0 million related to the impairment of goodwill and other tangibles at the Service Centers, SCS and PFI reporting units. The fair market value of these reporting units was determined using the income approach and Level 3 inputs, which required management to make estimates about future cash flows. Management estimated the amount and timing of future cash flows based on its experience and knowledge of the business environment in which the reporting units operate.

### 13. OTHER COMPREHENSIVE INCOME

Other comprehensive income generally represents all changes in shareholders' equity during the period, except those resulting from investments by, or distributions to, shareholders. During 2009 and 2010 the Company had other comprehensive income related to changes in interest rates in connection with an interest rate swap. At December 31, 2009, 2010 and 2011, the accumulated derivative (loss) income, net of income tax was \$(26,000), zero and zero, respectively. During 2011, the Company had other comprehensive income of \$106,000 (\$64,000 net of tax) related to changes in the market value of an investment with quoted market prices in an active market for identical instruments. At December 31, 2011, the accumulated gain on an investment, net of income tax was \$64,000. Comprehensive income (loss) for the years ending December 31, 2009, 2010 and 2011 was \$(41,717,000), \$19,407,000, and \$31,501,000, respectively.

### 14. SEGMENT DATA:

The Service Centers segment is engaged in providing maintenance, repair and operating products, equipment and services, including logistics capabilities, to industrial customers. The Service Centers segment provides a wide range of MRO products in the rotating equipment, bearing, power transmission equipment, fastener, industrial supplies, metal working and safety product categories. The Innovative Pumping Solutions segment fabricates and assembles custom-made engineered pump packages. The Supply Chain Services segment manages all or part of customers' supply chains, including inventory.

The high degree of integration of the Company's operations necessitates the use of a substantial number of allocations and apportionments in the determination of business segment information. Sales are shown net of intersegment eliminations.



Financial information relating to the Company's segments is as follows (in thousands):

	Service Centers	Innovative Pumping Solutions	Supply Chain Services	Total
<b>2011</b>				
Sales	\$560,233	\$102,305	\$144,467	\$807,005
Operating income for reportable segments	64,491	16,920	8,455	89,866
Identifiable assets at year end	293,925	51,058	58,192	403,175
Capital expenditures	3,713	310	73	4,096
Depreciation	2,908	326	276	3,510
Amortization	4,725	675	1,172	6,572
Interest expense	2,073	986	459	3,518
<b>2010</b>				
Sales	\$452,719	\$ 77,024	\$126,459	\$656,202
Operating income for reportable segments	50,549	10,335	7,120	68,004
Identifiable assets at year end	234,773	40,038	45,813	320,624
Capital expenditures	1,075	17	92	1,184
Depreciation	2,987	368	389	3,744
Amortization	4,055	604	1,165	5,824
Interest expense	4,115	700	393	5,208
<b>2009</b>				
Sales	\$391,060	\$ 55,913	\$136,253	\$583,226
Operating income for reportable segments	24,398	7,519	5,548	37,465
Identifiable assets at year end	199,937	22,604	48,386	270,927
Capital expenditures	1,475	29	89	1,593
Depreciation	3,458	348	454	4,260
Amortization	5,683	338	1,195	7,216
Interest expense	3,890	831	524	5,245

	Years Ended December 31,		
	2009	2010	2011
Operating income for reportable segments	\$ 37,465	\$ 68,004	\$ 89,866
Adjustment for:			
Amortization of intangibles	7,216	5,824	6,572
Impairment of goodwill and other intangibles	52,951	-	-
Corporate and other expense, net	26,630	25,089	27,809
Total operating income (loss)	(49,332)	37,091	55,485
Interest expense, net	5,245	5,208	3,518
Other expenses (income), net	(95)	(249)	(28)
Income (loss) before income taxes	\$(54,482)	\$ 32,132	\$ 51,995

## 15. QUARTERLY FINANCIAL INFORMATION (Unaudited)

Summarized quarterly financial information for the years ended December 31, 2009, 2010 and 2011 is as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2009				
Sales	\$ 157.6	\$ 144.4	\$ 143.4	\$ 137.8
Gross profit	46.1	41.4	40.8	23.1
Goodwill and other intangibles impairment	-	-	-	(53.0)
Net income (loss)	3.2	2.2	2.7	(50.5)
Earnings (loss) per share - basic	0.24	0.16	0.20	(3.84)
Earnings (loss) per share - diluted	0.23	0.15	0.19	(3.84)
2010				
Sales	\$ 147.0	\$ 167.3	\$ 172.2	\$ 169.7
Gross profit	42.0	47.9	48.9	49.6
Net income	3.6	4.6	5.3	5.9
Earnings per share - basic	0.27	0.33	0.38	0.41
Earnings per share - diluted	0.26	0.31	0.36	0.39
2011				
Sales	\$ 183.1	\$ 197.7	\$ 207.9	\$ 218.3
Gross profit	52.4	57.3	59.5	62.6
Net income	6.3	7.6	8.3	9.2
Earnings per share - basic	0.44	0.53	0.58	0.64
Earnings per share - diluted	0.42	0.50	0.55	0.61

The sum of the individual quarterly earnings per share amounts may not agree with year-to-date earnings per share as each quarter's computation is based on the weighted average number of shares outstanding during the quarter, the weighted average stock price during the quarter and the dilutive effects of the stock options and restricted stock in each quarter.

### ITEM 9. *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure*

None.

### ITEM 9A. *Controls and Procedures*

#### Disclosure Controls and Procedures

DXP carried out an evaluation, under the supervision and with the participation of its management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness as of December 31, 2011, of the design and operation of DXP's disclosure controls and procedures pursuant to Exchange Act Rules 13a-15 and 15d-15. Disclosure controls and procedures are the controls and other procedures of DXP that are designed to ensure that information required to be disclosed by DXP in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the U.S. Securities and Exchange Commission (the "Commission"). Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by DXP in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Based upon that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that DXP's disclosure controls and procedures were effective as of the end of the period covered by this Report.

## Internal Control Over Financial Reporting

### (A) Management's Annual Report on Internal Control Over Financial Reporting

Management's report on the Company's internal control over financial reporting is included on page 32 of this Report under the heading Management's Report on Internal Control Over Financial Reporting.

The effectiveness of our internal control over financial reporting at December 31, 2011 has been audited by Hein & Associates LLP, the independent registered public accounting firm that also audited our financial statements.

Their report is included on page 31 of this Report under the heading Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting.

### (B) Changes in Internal Control over Financial Reporting

None

## **ITEM 9B. Other Information**

None.

### **PART III**

#### **ITEM 10. *Directors, Executive Officers and Corporate Governance***

The information required by this item will be included in our Definitive Proxy statement for the 2012 Annual Meeting of Shareholders that we will file with the SEC within 120 days of the end of the fiscal year to which this Report relates (the "Proxy Statement") and is hereby incorporated by reference thereto.

#### **ITEM 11. *Executive Compensation***

The information required by this item will be included in the Proxy Statement and is hereby incorporated by reference.

#### **ITEM 12. *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The information required by this item will be included in the Proxy Statement and is hereby incorporated by reference.

#### **ITEM 13. *Certain Relationships and Related Transactions, and Director Independence***

The information required by this item will be included in the Proxy Statement and is hereby incorporated by reference.

#### **ITEM 14. *Principal Accounting Fees and Services.***

The information required by this item will be included in the Proxy Statement and is hereby incorporated by reference.

## PART IV

### ITEM 15. Exhibits, Financial Statement Schedules.

#### (a) Documents included in this report:

1. Financial Statements (included under Item 8):

<b>DXP Enterprises, Inc. and Subsidiaries:</b>	<b>Page</b>
Reports of Independent Registered Public Accounting Firm	30
Management Report on Internal Controls	32
Consolidated Balance Sheets	33
Consolidated Statements of Operations	34
Consolidated Statements of Shareholders' Equity	35
Consolidated Statements of Cash Flows	36
Notes to Consolidated Financial Statements	37

2. Financial Statement Schedules:

Schedule II – Valuation and Qualifying Accounts

All other schedules have been omitted since the required information is not significant or is included in the Consolidated Financial Statements or notes thereto or is not applicable.

3. Exhibits:

The following exhibits are filed herewith or are incorporated by reference to exhibits previously filed with the Commission.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Restated Articles of Incorporation, as amended (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-8 (Reg. No. 333-61953), filed with the Commission on August 20, 1998).
3.2	Bylaws (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-4 (Reg. No. 333-10021), filed with the Commission on August 12, 1996).
3.3	Amendment No. 1 to Bylaws of DXP Enterprises, Inc. (incorporated by reference to Exhibit A to the Company's Current Report on Form 8-K, filed with the Commission on July 28, 2011).
4.1	Form of Common Stock certificate (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8 (Reg. No. 333-61953), filed with the Commission on August 20, 1998).
4.2	See Exhibit 3.1 for provisions of the Company's Restated Articles of Incorporation, as amended, defining the rights of security holders.
4.3	See Exhibit 3.2 for provisions of the Company's Bylaws defining the rights of security holders.
4.4	Form of Senior Debt Indenture of DXP Enterprises, Inc. (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-3 (Reg. No. 333-166582), filed with the SEC on May 6, 2010).

- 4.5 Form of Subordinated Debt Indenture of DXP Enterprises, Inc. (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-3 (Reg. No. 333-166582), filed with the SEC on May 6, 2010).
- +10.1 DXP Enterprises, Inc. 1999 Employee Stock Option Plan (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999, filed with the Commission on August 16, 1999).
- +10.2 DXP Enterprises, Inc. 1999 Non-Employee Director Stock Option Plan (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999), filed with the Commission on August 16, 1999.
- +10.3 DXP Enterprises, Inc. Long Term Incentive Plan, as amended (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-8 (Reg. No. 333-61953), filed with the Commission on August 20, 1998).
- +10.4 Amendment Number One to DXP Enterprises, Inc. Non-Employee Director Stock Option Plan (incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed with the Commission on March 11, 2004).
- +10.5 Employment Agreement dated effective as of January 1, 2004, between DXP Enterprises, Inc. and David R. Little (incorporated by reference to Exhibit 10.10 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed with the Commission on March 11, 2004).
- +10.6 Employment Agreement dated effective as of June 1, 2004, between DXP Enterprises, Inc. and Mac McConnell (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2004, filed with the Commission on May 6, 2004).
- +10.7 Amendment Number One to DXP Enterprises, Inc. 1999 Employee Stock Option Plan (incorporated by reference to Exhibit 10.10 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the Commission on March 30, 2005).
- +10.8 Summary Description of Director Fees (incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the Commission on March 30, 2005).
- +10.9 Summary Description of Executive Officer Cash Bonus Plan (incorporated by reference to Exhibit 10.12 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the Commission on March 30, 2005).
- +10.10 Amendment Number Two to DXP Enterprises, Inc. Non-Employee Director Stock Option Plan (incorporated by reference to Exhibit 10.13 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the Commission on March 30, 2005).
- +10.11 DXP Enterprises, Inc. 2005 Restricted Stock Plan (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, (filed with the Commission on March 10, 2006).
- +10.12 Amendment Number One to Employment Agreement dated effective as of January 1, 2004, between DXP Enterprises, Inc. and David R. Little (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Commission on July 26, 2006).
- +10.13 Amendment No. One to DXP Enterprises, Inc. 2005 Restricted Stock Plan (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Commission on July 26, 2006).

- 10.14 Stock Purchase Agreement among DXP Enterprises, Inc., as Purchaser, Precision Industries, Inc., and the selling stockholders dated August 19, 2007, (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Commission on August 21, 2007).
- 10.15 Asset Purchase Agreement among DXP Enterprises, Inc., as Purchaser, Lone Wolf Rental, LLC, Indian Fire and Safety, Inc., and the other parties named therein dated October 18, 2007, (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Commission on October 22, 2007).
- 10.16 Stock Purchase Agreement among DXP Enterprises, Inc., as Purchaser, Vertex Corporate Holdings, Inc., the stockholders of Vertex Corporate Holdings, Inc. and Watermill-Vertex Enterprises, LLC, dated August 28, 2008, (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Commission on August 29, 2008).
- 10.17 Credit Agreement among DXP Enterprises, Inc., as Borrower, and Bank of America, N.A., as Syndication Agent, and Wells Fargo Bank, National Association, as Lead Arranger and Administrative Agent for the Lenders and the Lenders party thereto dated August 28, 2008 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Commission on August 29, 2008 and the Company's Current Report on Form 8-K/A, filed with the Commission on September 23, 2010).
- 10.18 Amendment Number Two to Employment Agreement dated effective January 1, 2004 between DXP Enterprises, Inc. and David R. Little (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 22, 2010).
- 10.19 Exhibits and schedules to the Credit Agreement among DXP Enterprises, Inc., as Borrower, and Bank of America, N.A., as Syndication Agent, and Wells Fargo Bank, National Association, as Lead Arranger and Administrative Agent for the Lenders and the Lenders party thereto, dated August 28, 2008 (incorporated by reference to Amendment Number Two to the Company's Current Report on Form 8-K/A, filed with the Commission on September 23, 2010).
- 10.20 Amendment Number One to Credit Agreement among DXP Enterprises, Inc., as Borrower, and Bank of America, N.A., as Syndication Agent, and Wells Fargo Bank, National Association, as Lead Arranger and Administrative Agent for the Lenders and the Lenders party thereto, dated August 28, 2008 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the Commission on March 16, 2010).
- 10.21 Asset Purchase Agreement, dated as of April 1, 2010, whereby DXP Enterprises, Inc. acquired the assets of Quadna, Inc. (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on April 5, 2010).
- 10.22 Asset Purchase Agreement, dated as of November 22, 2010, whereby DXP Enterprises, Inc. acquired the assets of D&F Distributors, Inc. (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on November 23, 2010).
- 10.23 Amendment Number One to Employment Agreement dated effective June 1, 2004 between DXP Enterprises, Inc. and Mac McConnell (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 9, 2011).
- 10.24 David Little Equity Incentive Program dated May 4, 2011 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on May 9, 2011).
- 10.25 Amendment Number Two to Credit Agreement among DXP Enterprises, inc., as Borrower, and Bank of America, N.A., as Syndication Agent, and Wells Fargo Bank, National Association, as Lead Arranger and Administrative Agent for the Lenders and the Lenders party thereto, dated August 28, 2008 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Commission on July 27, 2011).

- \*10.26 Amendment Number Three to Credit Agreement among DXP Enterprises, inc., as Borrower, and Bank of America, N.A., as Syndication Agent, and Wells Fargo Bank, National Association, as Lead Arranger and Administrative Agent for the Lenders and the Lenders party thereto, dated August 28, 2008.
- \*10.27 Asset Purchase Agreement, dated as of October 10, 2011, whereby DXP Enterprises, Inc. acquired the assets of Kenneth Crosby.
- \*10.28 Asset Purchase Agreement, dated as of December 30, 2011, whereby DXP Enterprises, Inc. acquired the assets of C.W. Rod Tool Company.
- 18.1 Letter of Independent Registered Public Accounting Firm Regarding Change in Accounting Principle (incorporated by reference to Exhibit 18.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008, filed with the Commission on May 12, 2008.)
- \*21.1 Subsidiaries of the Company.
- \*23.1 Consent of Hein & Associates LLP, Independent Registered Public Accounting Firm.
- \*31.1 Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Exchange Act, as amended.
- \*31.2 Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Exchange Act, as amended.
- \*32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended.
- \*32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended.

Exhibits designated by the symbol \* are filed with this Annual Report on Form 10-K. All exhibits not so designated are incorporated by reference to a prior filing with the Commission as indicated.

+ Indicates a management contract or compensation plan or arrangement.

The Company undertakes to furnish to any shareholder so requesting a copy of any of the exhibits to this Report on upon payment to the Company of the reasonable costs incurred by the Company in furnishing any such exhibit.



INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S  
REPORT ON FINANCIAL STATEMENT SCHEDULE

To the Board of Directors and Shareholders  
DXP Enterprises, Inc. and Subsidiaries  
Houston, Texas

We have audited, in accordance with auditing standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of DXP Enterprises, Inc. and Subsidiaries included in this Form 10-K and have issued our report thereon dated March 9, 2012. Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. The financial statement schedule listed in Item 15 herein (Schedule II-Valuation and Qualifying Accounts) is the responsibility of the Company's management and is presented for the purpose of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. The financial statement schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects with the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

Hein & Associates, LLP  
Houston, Texas  
March 9, 2012

SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS  
DXP ENTERPRISES, INC.  
Years Ended December 31, 2011, 2010 and 2009  
(in thousands)

Description	Balance at Beginning of Year	Charged to Cost and Expenses	Charged to Other Accounts	Deductions	Balance At End of Year
Year ended December 31, 2011					
Deducted from assets accounts					
Allowance for doubtful accounts	\$ 3,540	\$ 3,101	\$ 193	\$ 632 <sup>(1)</sup>	\$ 6,202
Year ended December 31, 2010					
Deducted from assets accounts					
Allowance for doubtful accounts	\$ 3,006	\$ 679	\$ -	\$ 145 <sup>(1)</sup>	\$ 3,540
Year ended December 31, 2009					
Deducted from assets accounts					
Allowance for doubtful accounts	\$ 3,494	\$ 675	\$ -	\$ 1,163 <sup>(1)</sup>	\$ 3,006
Valuation allowance for deferred tax assets	\$ 16	\$ -	\$ -	\$ (16) <sup>(2)</sup>	-

(1) Uncollectible accounts written off, net of recoveries.

(2) Reduction results from expiration or use of state net operating loss carryforwards.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DXP ENTERPRISES, INC.

(Registrant)

By: /s/ DAVID R. LITTLE

David R. Little

Chairman of the Board,

President and Chief Executive Officer

Dated: March 9, 2012

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

<u>NAME</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/David R. Little</u> David R. Little	Chairman of the Board, President Chief Executive Officer and Director (Principal Executive Officer)	March 9, 2012
<u>/s/Mac McConnell</u> Mac McConnell	Senior Vice President/Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	March 9, 2012
<u>/s/Cletus Davis</u> Cletus Davis	Director	March 9, 2012
<u>/s/Timothy P. Halter</u> Timothy P. Halter	Director	March 9, 2012
<u>/s/Kenneth H. Miller</u> Kenneth H. Miller	Director	March 9, 2012



### THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this “Amendment”) is made and entered into as of December 30, 2011 by and among DXP ENTERPRISES, INC., a Texas corporation (the “Company”); each of the Lenders (as defined below) party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, acting as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the “Administrative Agent”).

#### RECITALS

A. The Company, the lenders from time to time party thereto (individually, a “Lender” and collectively, the “Lenders”) and the Administrative Agent executed and delivered that certain Credit Agreement dated as of August 28, 2008, as amended by instruments dated as of March 15, 2010 and July 25, 2011. Said Credit Agreement, as amended, supplemented and restated, is herein called the “Credit Agreement”. Any capitalized term used in this Amendment and not otherwise defined shall have the meaning ascribed to it in the Credit Agreement.

B. The Company, the Lenders and the Administrative Agent desire to amend the Credit Agreement in certain respects.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties herein set forth, and further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, the Lenders and the Administrative Agent do hereby agree as follows:

#### SECTION 1. Amendments to Credit Agreement.

(a) The definition of “Revolving Commitment” set forth in Section 1.01 of the Credit Agreement is hereby amended to read in its entirety as follows:

“Revolving Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The amount of each Lender’s Revolving Commitment as of December 30, 2011 is set forth on Schedule 2.01. The aggregate amount of the Lenders’ Revolving Commitments as of December 30, 2011 is \$200,000,000.

(b) Schedule 2.01 to the Credit Agreement is hereby amended to be identical to Schedule 2.01 attached hereto.

(c) Exhibit B to the Credit Agreement is hereby amended to be identical to Exhibit B attached hereto.

#### SECTION 2. Conditions Precedent. The effectiveness of this Amendment shall be conditioned each of the following:

(a) the Administrative Agent shall have received from the Loan Parties and all of the Lenders either (1) a counterpart of this Amendment signed on behalf of such party or (2) written evidence satisfactory to the Administrative Agent (which may include teletype or e-mail transmission of a signed signature page of this Amendment) that such party has signed counterparts of this Amendment.

(b) the Administrative Agent shall have received original executed counterpart of the Note evidencing the Revolving Commitments, as increased pursuant to this Amendment (which Note shall replace the Notes previously executed to evidence Revolving Loans).

(c) the Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Company and the authorization of the execution and delivery of this Amendment, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

SECTION 3. Ratification. Except as expressly amended by this Amendment, the Credit Agreement and the other Loan Documents shall remain in full force and effect. None of the rights, title and interests existing and to exist under the Credit Agreement are hereby released, diminished or impaired, and the Company hereby reaffirms all covenants, representations and warranties in the Credit Agreement.

SECTION 4. Expenses. The Company shall pay to the Administrative Agent all reasonable fees and expenses of its legal counsel incurred in connection with the execution of this Amendment. In addition, the Borrower agrees to pay to the Administrative Agent, for its own account and for the account of the respective Lenders, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

SECTION 5. Certifications. The Company hereby certifies that (a) no material adverse change in the business, assets, operations or condition, financial or otherwise of the Company and its Subsidiaries, taken as a whole, since December 31, 2007 and (b) no Default or Event of Default has occurred and is continuing or will occur as a result of this Amendment.

SECTION 6. Miscellaneous. This Amendment (a) shall be binding upon and inure to the benefit of the Company, the Lenders and

the Administrative Agent and their respective successors, assigns, receivers and trustees; (b) may be modified or amended only by a writing signed by the required parties; (c) shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America; (d) may be executed in several counterparts by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original agreement, and all such separate counterparts shall constitute but one and the same agreement and (e) together with the other Loan Documents, embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. The headings herein shall be accorded no significance in interpreting this Amendment.

[Signature Pages Follow]

HOU:0050320/00177:1570397v1

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NOTICE PURSUANT TO TEX. BUS. & COMM. CODE §26.02

THE CREDIT AGREEMENT, AS AMENDED BY THIS AMENDMENT, AND ALL OTHER LOAN DOCUMENTS EXECUTED BY ANY OF THE PARTIES PRIOR HERETO OR SUBSTANTIALLY CONCURRENTLY HERewith CONSTITUTE A WRITTEN LOAN AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Company, the Lenders and the Administrative Agent have caused this Amendment to be signed by their respective duly authorized officers, effective as of the date first above written.

DXP ENTERPRISES, INC.,  
a Texas corporation

By: /s/Mac McConnell  
Mac McConnell,  
Senior Vice President, Chief Financial Officer and Secretary

[signature page to Third Amendment to Credit Agreement]

HOU:0050320/00177:1570397v1

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The undersigned Subsidiaries of the Borrower hereby join in this Amendment to evidence their consent to execution by Borrower of this Amendment, to confirm that each Loan Document now or previously executed by the undersigned applies and shall continue to apply to this Amendment, and to acknowledge that without such consent and confirmation, Lenders would not execute this Amendment and to join in the notice pursuant to Tex. Bus. & Comm. Code §26.02 set forth above.

PRECISION INDUSTRIES, INC.,  
a Nebraska corporation

By: /s/Mac McConnell  
Mac McConnell,  
Secretary and Treasurer

SEPCO INDUSTRIES, INC.,  
a Texas corporation  
PELICAN STATE SUPPLY COMPANY, INC.,  
a Nevada corporation  
DXP ACQUISITION, INC.,  
a Nevada corporation  
AMERICAN MRO, INC.,  
a Nevada corporation  
R.A. MUELLER., INC.,  
an Ohio corporation  
DXP HOLDINGS, INC.,  
a Texas corporation

By: /s/Mac McConnell  
Mac McConnell,  
Vice President, Treasurer and Secretary

PMI OPERATING COMPANY, LTD.,  
a Texas limited partnership

By: Pump-PMI, LLC,  
a Texas limited liability company,  
its general partner

By: DXP Enterprises, Inc.,  
a Texas corporation,  
its sole member

By: /s/Mac McConnell  
Mac McConnell,  
Senior Vice President, Chief Financial Officer and Secretary

PMI INVESTMENT, LLC,  
a Delaware limited liability company

By: /s/David R. Little  
David R. Little, Manager

PUMP-PMI LLC,  
a Texas limited liability company

By: DXP Enterprises, Inc.,

a Texas corporation,  
its sole member

By: /s/Mac McConnell  
Mac McConnell,  
Senior Vice President, Chief Financial Officer and Secretary

VERTEX CORPORATE HOLDINGS, INC.,  
a Delaware corporation  
PAWTUCKET HOLDINGS, INC.,  
a Delaware corporation  
DXP ENERGY SERVICES, LLC,  
a Texas limited liability company

By: /s/Mac McConnell  
Mac McConnell,  
Vice President

PFI, LLC,  
a Rhode Island limited liability company

By: Pawtucket Holdings, Inc.,  
a Delaware corporation

By: /s/Mac McConnell  
Mac McConnell,  
Vice President

**[signature page to Third Amendment to Credit Agreement]**

HOU:0050320/00177:1570397v1

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WELLS FARGO BANK, NATIONAL ASSOCIATION, individually and as  
Administrative Agent

By: /s/Thomas Caver  
Name: Thomas Caver  
Title: Vice President

**[signature page to Third Amendment to Credit Agreement]**

HOU:0050320/00177:1570397v1

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**SCHEDULE 2.01**

Lender

Revolving Commitments as of December 30, 2011

Wells Fargo Bank, National Association

\$200,000,000

HOU:0050320/00177:1570397v1

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**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**DXP ENTERPRISES, INC.  
("Buyer")**

**AND**

**KENNETH CROSBY, LLC  
KENNETH CROSBY NEW YORK, LLC  
KENNETH CROSBY SOUTHERN TIER, LLC  
KENNETH CROSBY WESTERN NEW YORK, LLC  
(collectively, "Seller")**

**October 10, 2011**

750365.7

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EXHIBITS :

- EXHIBIT A : Form of General Conveyance, Transfer, Assignment & Assumption (Sections 8.03 and 9.05)
- EXHIBIT B : Form of Employment Agreement (Sections 8.03, 8.06 and 9.05)
- EXHIBIT C : Form of Landlord Consent to Assignment and Estoppel Certificate (Sections 7.08 and 8.03)
- EXHIBIT D : Form of Escrow Agreement (Section 8.03)
- EXHIBIT E : Tax Allocation (Section 1.08(a))
- EXHIBIT F : Form of Assignment and Assumption of Lease (Sections 8.03 and 9.05)
- EXHIBIT G : Working Capital Calculation (Section 1.03(b))
- EXHIBIT H : Membership Interests Ownership for each of the 4 companies comprising the Seller (Section 14.37)
- EXHIBIT I : Form of Closing Agreement

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into this 10<sup>th</sup> day of October, 2011 (“the Effective Date”), by and among KENNETH CROSBY, LLC, KENNETH CROSBY NEW YORK, LLC, KENNETH CROSBY SOUTHERN TIER, LLC, and KENNETH CROSBY WESTERN NEW YORK, LLC, each a New York limited liability company (collectively, the “Seller”) and DXP ENTERPRISES, INC., a Texas corporation (the “Buyer”).

### WITNESSETH:

WHEREAS, the Seller desires to transfer to the Buyer the Business and all of the Transferred Assets and the Assumed Liabilities and the Buyer desires to acquire such Business, Transferred Assets and Assumed Liabilities, all upon the terms and subject to the conditions set forth herein; and

WHEREAS, the parties hereto desire to set forth certain representations, warranties, covenants and agreements, all as more fully set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

### ARTICLE I

#### PURCHASE AND SALE OF ASSETS

##### 1.01 Transferred Assets.

(a) Subject to the terms and conditions of this Agreement and in consideration of the obligations of the Buyer as provided herein, and except for the Excluded Assets as provided in Section 1.02 hereof, at the Closing, the Seller has good and marketable title to the Transferred Assets (as defined herein) and Seller shall sell, assign, transfer, grant, bargain, deliver and convey to the Buyer, free and clear of all Liens, other than Permitted Liens, all of Seller’s right, title and interest in, to and under the Business, as a going concern, and all assets owned or leased and used by the Seller in connection with or arising out of the Business of every type and description, real or personal, tangible and intangible, wherever located and whether or not reflected on the books and records of the Seller (hereinafter sometimes collectively referred to as the “Transferred Assets”), including, but not limited to:

- (i) all tangible personal property, including but not limited to the Equipment and vehicles set forth in Schedule 1.01(a)(i) to the Disclosure Schedule;
- (ii) all Inventories, including the Inventories set forth in Schedule 1.01(a)(ii) to the Disclosure Schedule;
- (iii) all accounts receivable and other rights to payment from customers of Seller, including the accounts receivable set forth in Schedule 1.01(a)(iii) to the Disclosure Schedule (“Accounts Receivable”);
- (iv) the Proprietary Information, including but not limited to the names “Kenneth Crosby, Kenneth Crosby New York, Kenneth Crosby Southern Tier, Kenneth Crosby Western New York, Kelley & Gierston Industrial Supply, Kelley & Kelley Industrial Supply and Gierston Tool” or any derivatives thereof, the names of the customers and suppliers of the Business;
- (v) to the extent assignable, all Contracts and Other Agreements, including but not limited to (A) all rights of Seller under and pursuant to all written agreements with customers including those agreements which are for a term of more than six (6) months which are all set forth on Schedule 1.01(a)(v), (B) all rights of Seller under non-disclosure or confidentiality agreements, non-compete or non-solicitation agreements with former employees, Transferred Employees and agents of Seller or with third Persons to the extent relating to the Business or the Transferred Assets and (C) all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold and services provided to Seller or to the extent affecting any Transferred Assets or the Business (but specifically excluding warranties, representations and guaranties specifically and solely relating to any Excluded Assets or Retained Liabilities);
- (vi) intentionally omitted;
- (vii) to the extent assignable, all prepaid expenses, deposits and similar assets of Seller, including but not limited to customer deposits, security for rent, electricity, telephone or other utilities and prepaid charges and expenses including prepaid rent and any prepaid items shown on Seller’s December 31, 2010 Financial Statements relating to the Transferred Assets and the Business other than prepaid insurance for the Business, subject to adjustment due to the passage of time;

- (viii) all documents that are related to the Business, including but not limited to documents relating to products, services, marketing, advertising, promotional materials, Proprietary Information, personnel files of the Transferred Employees and all files, customer files and related documents (including credit information), supplier lists, records, literature and correspondence, to the extent permitted by law to be assigned and transferred (“Documents and Other Papers”);
- (ix) to the extent assignable, all permits, including but not limited to environmental permits used by Seller in the Business and all permits necessary to conduct the Business as currently conducted, and all rights, and incidents of interests therein (“Permits”);
- (x) all supplies and computer equipment owned by Seller and used or held for use in connection with the Transferred Assets and the Business;
- (xi) to the extent not used to repair or replace any Transferred Assets, all rights to third-party property and casualty insurance proceeds to the extent receivable in respect of property or assets that would otherwise be Transferred Assets; and
- (xii) all other intangible assets of Seller, if any, associated with the Transferred Assets and the Business.

(b) The Seller shall use its reasonable efforts to obtain, or as the case may be assist the Buyer in obtaining, such consents of third parties as are necessary for the assignment of the Transferred Assets; *provided, however*, that Seller shall not be required to pay any amounts in respect of obtaining such consents. To the extent that any of the Transferred Assets are not assignable or consents to the assignment thereof cannot be obtained as herein provided, such Transferred Assets shall be held by the Seller in trust for the Buyer and any obligations with respect thereto shall be performed by the Buyer in the name of the Seller and all benefits and obligations derived thereunder shall be for the action of the Buyer. The Seller shall, at the request of the Buyer, enforce in a reasonable manner, at the cost of and for the account of the Buyer, any and all rights of the Seller against such third party relating to any such Transferred Assets. Seller shall promptly pay over to the Buyer all money or other consideration received by it in respect of such entitlement.

1.02 Excluded Assets. There shall be excluded from the Transferred Assets (the “Excluded Assets”): (i) cash or cash equivalents, (ii) the minute books, organizational documents, stock registers and such other books and records of Seller pertaining to ownership, organization or existence of Seller as a corporation, *provided, however*, duplicate copies of such records shall be provided to Buyer as are reasonably necessary to enable Buyer to file tax returns and file information with the Securities and Exchange Commission, (iii) those assets of listed or described on Schedule 1.02 of the Disclosure Schedule, and (iv) any monies owed by any Member or any Manager to the Seller.

### 1.03 Consideration.

(a) The consideration for Buyer’s purchase of the Transferred Assets and the Business shall be: Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00) (“Seller Purchase Price”), subject to adjustment as otherwise provided under this Section 1.03, paid as follows: (i) the amount that equals the payment of Seller’s bank debt (the “Debt Payments”), (ii) the amount equal to seven and one-half percent (7.5%) of the Purchase Price (the “Escrow Amount”), (iii) the Seller Purchase Price less the Debt Payments and less the Escrow Amount (“Seller Cash Payment”), and (iv) the assumption of the Assumed Liabilities shall be collectively known as the “Seller Consideration”. On the Closing Date, Buyer shall pay to Seller (i) by wire transfer into an account(s) designated by Seller in an amount necessary to satisfy the Seller’s bank debt; (ii) by wire transfer equal to the Escrow Amount to the escrow account as specified in the Escrow Agreement as defined in Section 8.03; and (iii) by wire transfer into an account(s) designated by Seller in an amount equal to the Seller Cash Payment.

(b) Purchase Price Adjustment. The Seller Purchase Price shall be adjusted as provided in this Section 1.03 to reflect the difference between the Final Net Working Capital and the Target Working Capital of \$5,850,000 (which was determined as reflected in Exhibit “G”). Not later than sixty (60) days after the Closing Date, Seller shall cause to be prepared and delivered to Buyer a statement setting forth Seller’s calculation of Final Net Working Capital (the “Closing Statement”), which shall be prepared by Seller in accordance with Exhibit “G”.

(c) If Buyer disagrees with Seller’s calculations in the Closing Statement, Buyer may, within fifteen (15) days after delivery of the Closing Statement, deliver a notice to Seller disagreeing with such calculation and setting forth Buyer’s calculation of such amounts (a “Dispute Notice”). Any such Dispute Notice shall specify those items or amounts as to which Buyer disagrees, and Buyer shall be deemed to have agreed with all other calculations and amounts contained in the Closing Statement. If a Dispute Notice shall be duly delivered by Buyer to Seller, Seller and Buyer shall, during the fifteen (15) days following such delivery, use their good faith efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the Final Net Working Capital, as applicable, which amount shall not be less than the amount thereof shown in the Closing Statement nor more than the amount thereof shown in Buyer’s Dispute Notice. If the parties so resolve all disputes, the computation of the Final Net Working Capital, as amended to the extent necessary to reflect the resolution of the dispute, shall be conclusive and binding on all parties. If during such period, Seller and Buyer are unable to reach an agreement, they shall within five (5) Business Days thereafter cause Hein & Associates, LLP (“Buyer’s Firm”) and Mengel Metzger Barr & Co. LLP (“Seller’s Firm”) (Seller’s Firm and Buyer’s Firm shall collectively be referred to as “the Firms”) to each review this Agreement and the disputed items or amounts for the purpose of calculating the Final Net Working

Capital and have the Firms endeavor to mutually agree upon a calculation of Final Net Working Capital (the cost of which shall be borne by each of the respective parties). In the event the Firms are unable to reach an agreement within five (5) Business Days thereafter, the Buyer and Seller will together appoint a third independent accounting firm (the "Third Firm") (it being understood that in making such disputed calculation, the Third Firm shall be functioning as an expert and not as an arbitrator). In making such disputed calculation, the Third Firm shall consider only those items or amounts in the Closing Statement and the Dispute Notice to which Buyer has disagreed. The Third Firm shall deliver to Seller and Buyer, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Firm), a report setting forth the calculations of the Final Net Working Capital. Such report shall be final and binding upon Seller and Buyer and judgment may be entered to enforce such report in any court of competent jurisdiction. The fees, costs and expenses of the Third Firm ("the Expenses") shall be paid as follows: (i) if the event the Third Firm agrees with Seller's calculation of the Final Net Working Capital, then Buyer shall pay the Expenses, (ii) if the Third Firm agrees with Buyer's calculation of the Final Net Working Capital, then Seller will pay the Expenses, or (iii) if the Third Firm does not agree with Seller's or Buyer's calculation of Final Net Working Capital, then the Expenses shall be prorated between Seller and Buyer based on the percentage of adjustment for each parties' Final Net Working Capital calculation.

(d) Buyer and Seller shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the Closing Statement and the calculation of the Final Net Working Capital and in the conduct of the review thereof, including the making available to the extent necessary books, records, work papers and personnel.

(e) If the Final Net Working Capital is less than The Target Working Capital, Seller shall pay to Buyer within ninety (90) days from the Closing Date, the total amount of such difference as an adjustment to the Seller Cash Payment by wire transfer from Seller of immediately available funds to the account designated by Buyer. In the event Seller fails to timely make such payment, then Buyer may utilize any other legal or equitable remedy to collect said amount from Seller. If the Closing Working Capital is greater than Target Working Capital, Buyer shall pay to Seller within ninety (90) days from the Closing Date, the total amount of such difference as an adjustment to the Seller Cash Payment by wire transfer from Buyer of immediately available funds to the account designated by Seller. In the event Buyer fails to timely make such payment, then Seller may utilize any other legal or equitable remedy to collect said amount from Buyer.

(f) The Escrow Amount shall be held and disbursed pursuant to the terms and conditions of the Escrow Agreement. Any remaining amounts held in the escrow account under the terms of the Escrow Agreement (and not otherwise required for the payment of fees and expenses thereunder) shall be distributed to Seller, and Buyer agrees to consent to such final distribution.

1.04 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing the Buyer will assume, effective as of the Closing Date, the following liabilities of Seller (collectively, the "Assumed Liabilities"):

(a) all liabilities of Seller under the Contracts and Other Agreements that arise out of or relate to the performance thereof for the period from and after the Closing Date and the other obligations and liabilities associated with the operation of the Business from and after the Closing Date;

(b) all Trade Payables of the Seller as of the Closing Date arising out of the ordinary course of the Business prior to the Closing Date;

(c) all obligations of Seller with respect to sales taxes and other accrued expenses related to the Business, including customer rebates, accrued as of the Closing Date arising in the ordinary course of Business prior to the Closing Date only if the obligations and the amounts of the obligations are specifically listed on Schedule 1.04(c);

(d) the liabilities set forth in Article VI specifically assumed by Buyer;

(e) the warranty claims provided in Section 7.09; and

(f) those liabilities listed on Schedule 1.04(f).

1.05 Liabilities Not Assumed by the Buyer. Except for the Assumed Liabilities and the warranty claims as provided in Section 7.09 hereof, the Seller shall pay and discharge in due course all of its liabilities, debts and obligations, whether known or unknown, now existing or hereafter arising, contingent or liquidated, including, without limitation, those listed in Schedule 1.05 of the Disclosure Schedule (the "Retained Liabilities"), and the Buyer shall not assume, or in any way be liable or responsible for, any of such Retained Liabilities. Without limiting the foregoing, the Retained Liabilities shall also include the following:

(a) any liability or obligation of the Seller arising out of or in connection with this Agreement and the consummation and performance of the transactions contemplated hereby, whether or not such transactions are consummated, including but not limited to, and except as otherwise provided herein, any liability for Taxes so arising;

(b) any liability or obligation for any and all Taxes of, or pertaining or attributable to, (i) the Seller for any period that ends on or before the Closing Date, or (ii) the Business and/or the Transferred Assets for any period or portion thereof that ends after the close of business on the day before the Closing Date (including, but in no way limited to, any and all Taxes described in clauses (i) and (ii) of this Section 1.05(b) for which liability is or may be sought to be imposed on the Buyer under any successor liability, transferee liability or similar provision of any applicable foreign, federal, state or local



law);

(c) except for the warranty claims as provided in Section 7.09 hereof, all other liabilities and obligations to any Person arising prior to the Closing or related to the conduct or operation of the Transferred Assets or the Business prior to the Closing Date, including, but not limited to, the Pre-Closing Obligations and the specific liabilities, obligations or litigation listed on Schedule 1.05(c) of the Disclosure Schedule;

(d) all environmental costs and liabilities, to the extent arising out of or otherwise related to: (i) the ownership or operation by Seller of the Transferred Assets or the Business, including but not limited to the Facilities, prior to the Closing Date, and (ii) the Excluded Assets or any other real property formerly owned, operated, leased or otherwise used by Seller;

(e) except as set forth in Article VI, all liabilities arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by Seller of any individual, including salary and bonuses (including any Transferred Employee) before the Closing Date, (ii) worker's compensation claims against Seller that relate to the conduct of the Business or the operation of the Transferred Assets before the Closing Date, irrespective of whether such claims are made prior to or after the Closing or (iii) any employee benefit plan of the Seller;

(f) all liabilities arising out of, under or in connection with any indebtedness of Seller, not specifically assumed by Buyer in this Agreement, including but not limited to notes payable to the Members or to notes payable to any employee or employees of the Seller;

(g) all liabilities in respect of: (i) any pending or threatened legal proceeding or any claim arising out of, relating to or otherwise in respect of the operation of the Business prior to the Closing Date including but not limited to: (a) Emerson Enterprises, LLC vs. Kenneth Crosby-New York, Inc., et al; Civil Action No. 03-CV-6530 CJS(p) in the United States District Court for the Western District of New York and (b) Kenneth Crosby New York, LLC vs. Johnson & Johnson Vision Care, Inc., et al.; CPR Case G-11-24; Arbitration pursuant to the CPR Institute for Dispute Resolution, or (ii) any Excluded Asset; and

(h) except as provided in Section 7.09, all liabilities relating to any dispute with any client or customer of the Business existing as of the Closing Date or based upon, relating to or arising out of events, actions, or failures to act prior to the Closing Date; provided, however, the Buyer agrees to reasonably assist Seller in satisfying such dispute at Seller's cost, including by providing services of Buyer and the Transferred Employees and Transferred Assets.

#### 1.06 Prorations of Property Taxes and Expenses.

(a) Any general property Tax assessed against or pertaining to the Transferred Assets, including pursuant to the leases for the Facilities, for the taxable period that includes the day before the Closing Date shall be prorated between the Buyer (on or after the Closing Date) and the Seller (prior to the Closing Date) as of the Closing Date. In the event the amount of any such general property Tax cannot be ascertained as of the Closing Date, proration shall be made on the basis of the preceding year and to the extent that such proration may be inaccurate the Seller and the Buyer agree to make such payment to the other after the tax statements have been received as are necessary to allocate such general property Tax properly between the Seller and the Buyer as of the Closing Date.

(b) Except as otherwise provided in this Agreement, the Seller and the Buyer agree that amounts payable with respect to any expenses attributable to the conduct of the Business, including but not limited to utility charges and insurance premiums, shall be prorated as of the Closing Date (with Seller responsible for the period up to the Closing Date and Buyer responsible for the period commencing on the Closing Date) to the extent the charges and expenses cannot be identified as to the party who received the benefits to which such charges and expenses relate.

#### 1.07 Transfer Taxes; Recording Fees; Tax Reimbursement.

(a) The Buyer and the Seller acknowledge and agree that the Purchase Price does not include any sales, use or transfer tax imposed as a direct result of the purchase of the Transferred Assets contemplated by this Agreement. The Buyer hereby agrees to indemnify the Seller against, and agrees to protect, save and hold the Seller harmless from, any loss, liability, obligation or claim (whether or not ultimately successful) for sales, use or transfer Taxes (and any interest, penalties, additions to tax and fines thereon or related thereto) imposed as a direct result of the purchase of the Transferred Assets by the Buyer as contemplated by this Agreement. The Seller shall be responsible for any Taxes related to any sales, use or transfer Taxes arising out of any period of time prior to the Closing Date.

(b) The Buyer shall pay any and all recording, filing or other governmental fees relating to documenting the transfer of the Transferred Assets from the Seller to the Buyer.

(c) Seller shall timely file all Tax Returns relating to the operation of the Transferred Assets and conduct of the Business prior to the Closing Date. If Seller remits any income taxes that are Assumed Liabilities of Buyer pursuant to Section 1.04(f) hereof, then Buyer shall promptly reimburse Seller for such payment upon provision by Seller of reasonable written evidence of such remittance.

1.08 Allocation of Purchase Price .

(a) Seller and Buyer have prepared an initial written statement setting forth the allocation of the consideration (including, without limitation, the Seller Purchase Price and any adjustments thereto) deemed to have been paid for federal income tax purposes by the Buyer to the Seller pursuant to this Agreement (the "Tax Consideration") among the Transferred Assets and the other covenants and rights arising hereunder (the "Allocation") and a copy of such written statement is attached hereto as Exhibit "E".

(b) For federal income tax purposes (including, without limitation, Buyer's, each Member's and the Seller's compliance with the reporting requirements of Section 1060 of the Code), the Seller and the Buyer hereby agree to use the Allocation and to cooperate in good faith with each other in connection with the preparation and filing of any information required to be furnished to the Internal Revenue Service under Section 1060 of the Code (including, without limitation, Section 1060(b) and (e) of the Code) and any applicable regulations thereunder. Without limiting the generality of the preceding sentence, the Buyer and the Seller agree to (i) report the Allocation to the Internal Revenue Service on Form 8594 and, if required, supplemental Forms 8594, in accordance with the instructions to Form 8594 and the provisions of Section 1060 of the Code and the applicable regulations thereunder, and (ii) coordinate their respective preparation and filing of each such Form 8594 and any other forms or information statements or schedules required to be filed under Section 1060 of the Code and the applicable regulations thereunder so that the Allocation and information reflected on such forms, statements and schedules shall be consistent.

(c) Notwithstanding the foregoing provisions of this Section 1.08 , in the event Buyer and Seller mutually agree in writing, Buyer may prepare and deliver to Seller from time to time revised statements of any Allocation, to the extent that any matters need updating (including, without limitation, in respect of any adjustments under Section 1.03 hereof), and such revised statements shall be substantially consistent with the manner of allocation previously agreed to by the Seller and the Buyer.

1.09 Right to Control Payment . Buyer shall have the right, but not the obligation, to make any payment due from Seller with respect to any Retained Liabilities which are not paid by Seller within ten (10) Business Days following written request for payment from Buyer; *provided, however* , that if Seller advises Buyer in writing during such ten (10) Business Day-period that a good faith payment dispute exists or Seller has valid defenses to non-payment with respect to such Retained Liability, then Buyer shall not have the right to pay such Retained Liability as long as Seller in good faith continues to assert to Buyer that the dispute exists or continues to assert to Buyer such valid defenses. In the event the Buyer makes any such payment, Seller agrees to reimburse Buyer promptly and in any event within ten (10) Business Days following written notice of such payment by Buyer for the amount of any payment made by Buyer pursuant to this Section 1.09 .

1.10 Accounts Receivable Collection & Other Adjustments . Following the Closing Date, Seller shall provide reasonable assistance to Buyer in the collection of the accounts receivable. If Seller shall receive payment in respect of the accounts receivable, then Seller shall forward such payment to Buyer in not less than thirty (30) days from receipt of such payment. In the event either Seller's or Buyer's accounts are charged for a payment that is otherwise the responsibility of the other party pursuant to this Agreement, then the other party shall remit the amount of such payment to the party charged in not less than thirty (30) days from written notice by the party charged with such payment.

## ARTICLE II

### CLOSING

Subject to the conditions set forth in this Agreement, the Closing shall take place at 1001 Lexington, Rochester, New York, or by electronic transmission of all closing documents between the counsels for Seller and for Buyer on or before October 11, 2011 or at such other time, date and place as the parties hereto shall mutually agree upon in writing with the effective date/time of the Closing to be October 11, 2011 at 12:01 AM (the "Closing Date"). Except as set forth in Article XIII , failure to consummate the transactions contemplated hereby on such date shall not result in a termination of this Agreement or relieve any party hereto of any obligation hereunder. Title to, ownership of, control over and risk of loss of the Transferred Assets shall pass to the Buyer on the Closing Date at 12:01 AM, New York, New York time.

## ARTICLE III

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### OF THE SELLER

The Seller hereby represents and warrants to the Buyer and covenants and agrees as follows:

3.01 Corporate Matters .

(a) Each of the entities comprising Seller are limited liability companies organized, validly existing and in good standing under the laws of the State of New York. The Seller is duly authorized, qualified and licensed and has all requisite power and authority under all applicable laws, ordinances and orders of public authorities to own, operate and lease its properties and assets and to carry on its business in the places and in the manner currently conducted. Kenneth Crosby, LLC is qualified to do business as a foreign corporation in Massachusetts. To the Knowledge of Seller, there is no other jurisdiction in which the nature and extent of the Seller's business or the character of its assets makes qualification to transact business as a foreign corporation necessary. The Seller has all requisite corporate power, legal capacity and authority to

execute and deliver this Agreement and to perform its obligations under this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Seller in connection with the transactions contemplated by this Agreement.

(b) The Seller has no Subsidiaries.

(c) The Seller does not do business in any state or commonwealth under any name other than the corporate name set forth in the first paragraph of this Agreement.

(d) The Seller represents and warrants to the Buyer that (i) the Members hold and own beneficially the percentages of membership interests set out in Exhibit "H" of each company comprising the Seller, except encumbrances on transfer generally imposed under applicable securities law; and (ii) no other form of membership interests of the Seller has been issued by the Seller. To the Knowledge of Seller, no other Persons owning membership interests in each company comprising the Seller are a party to an option, warrant, purchase right, or other contract or commitment that could require the Members or such other owners of said membership interests to sell, transfer, or otherwise dispose of any membership interests of the Seller (other than in this Agreement). To Seller's Knowledge, the Members and any other beneficial owners of the membership interests are not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any membership interests of each company comprising the Seller. All of the membership interests of the Seller has been duly authorized and validly issued. Set out in Schedule 3.01(d) are copies of the Articles of Organization and the Operating Agreement and all amendments thereto for each of the four (4) companies comprising the Seller.

### 3.02 Validity of Agreement and Conflict with Other Instruments .

(a) This Agreement has been duly authorized by the Managers of each company comprising the Seller. No further corporate action is necessary on the part of the Seller to execute and deliver this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Seller and is a legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The covenants set out in Sections 7.07 and 7.10 hereof have been approved by all necessary corporate action on the part of Seller and are legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies.

(c) Except for customer contracts, purchase orders, vendor contracts and software license agreements that are not assignable, to the Knowledge of Seller, the execution, delivery and performance of this Agreement and the other agreements and documents to be delivered by the Seller to the Buyer, the consummation of the transactions contemplated hereby or thereby, and the compliance with the provisions hereof or thereof, by the Seller will not, with or without the passage of time or the giving of notice or both:

- (i) conflict with, constitute a breach, violation or termination of any provision of, or give rise to any right of termination, cancellation or acceleration, or loss of any right or benefit or both, under, any of the Contracts and Other Agreements to which the Seller is a party or by which any of them is bound, other than, in each case, such that would not materially and adversely affect the ability of the Seller to consummate the transactions contemplated hereby or thereby;
- (ii) result in an acceleration or increase of any amounts due with respect to the Trade Payables;
- (iii) conflict with or violate the Articles of Organization or other similar formation document or the Operating Agreement or other similar governing document of the Seller;
- (iv) result in the creation or imposition of any Lien on any of the Transferred Assets; or
- (v) violate any law, statute, ordinance, regulation, judgment, writ, injunction, rule, decree, order or any other restriction of any kind or character applicable to the Seller or any of their respective properties or assets.

### 3.03 Approvals, Licenses and Authorizations .

(a) Except as set forth on Schedule 3.03(a), to the Knowledge of the Seller, no order, license, consent, waiver, authorization or approval of, or exemption by, or the giving of notice to, or the registration with, or the taking of any other action in respect of, any Person not a party to this Agreement, including any Governmental Entity, and no filing, recording, publication or registration in any public office or any other place is now, or under existing law in the future will be, necessary on behalf of the Seller to authorize the execution, delivery and performance of this Agreement or any other agreement contemplated hereby to be executed and delivered by Seller and the consummation of the transactions contemplated hereby or thereby (including, but not limited to, assignment of the Transferred Assets, to the extent assignable), or to effect the

legality, validity, binding effect or enforceability thereof.

(b) Schedule 3.03(b) contains a list of all licenses, permits, concessions, warrants, franchises and other governmental authorizations and approvals of all Governmental Entities required or necessary to carry on the Business in the places and in the manner currently conducted have been duly obtained, are in full force and effect. Except as set forth on Schedule 3.03(b), no violations are in existence or have been recorded since December 31, 2010 with respect to such licenses, permits or other authorizations and no proceeding is pending or, to the Knowledge of Seller, threatened with respect to the revocation or limitation of any of such licenses, permits or other authorizations. The Seller has complied with all laws, rules, regulations and orders applicable to the Business, and all rules, regulations and orders respecting the provision of services by the Seller.

#### 3.04 Title to and Condition of Transferred Assets.

(a) The Seller currently leases all of the Facilities. Except as set forth in Schedule 3.04(a), all of the Transferred Assets are located at one of the Facilities.

(b) The Seller has good and marketable title to all the Transferred Assets free and clear of all Liens other than those Liens set forth on Schedule 3.04(b) of the Disclosure Schedule and Permitted Liens, which Liens shall be released on or prior to the Closing. To the knowledge of the Seller, the Transferred Assets constitute materially all of the assets used in or held for the use in the Business and are, with the exception of bank accounts and all insurances, materially sufficient, for Buyer to conduct the Business from and after the Closing Date as the Business has been conducted by Seller. All of the Equipment is in the Seller's possession and control and in good condition and repair, ordinary wear and tear accepted, and is suitable for the purposes used.

(c) All Inventories are set forth on Schedule 1.01(a)(ii) of the Disclosure Schedule. The Inventories are in good and marketable condition and are saleable in the ordinary course of business. The Inventories constitute typical quantities for the normal operation of the Business and the Inventories will be in such typical quantities on the Closing Date. Except as specifically set forth on Schedule 3.04(c) or as noted on Schedule 1.01(a)(ii), the Inventories do not consist of any items that are unsaleable, defective, damaged, not in good condition or fail to meet government, industry or manufacturer standards, slow moving (any item that turned less than once during the 365 day period prior to the Closing Date) at any business location or at the combined locations of the Business or obsolete except as reserved in the December 31, 2010 Financial Statements.

(d) The accounts receivable comprising part of the Transferred Assets are owned by the Seller free and clear of all Liens (other than those Liens set forth in Schedule 3.04(d) of the Disclosure Schedule, which Liens shall be released on or prior to the Closing and Permitted Liens) and relate to receivables owed to the Seller. All accounts receivable were generated in the ordinary course of business pursuant to bona fide transactions and are payable on ordinary trade terms. None of the accounts receivable are more than 90 days past due or are otherwise doubtful of being collected. The Seller is unaware of any existing facts or circumstances that could reasonably be expected to increase uncollectible accounts receivable beyond the allowance for bad debt reflected in the December 31, 2010 Financial Statements.

(e) The Seller owns or possesses licenses or other rights to use, and will, to the extent assignable and transferable, at the Closing, transfer to the Buyer, all rights to all Proprietary Information necessary for the conduct of the Business as currently conducted, except for standard "shrink wrapped, off the shelf" or "click-wrap" software. Set forth in Schedule 3.04(e) of the Disclosure Schedule is a complete and accurate list of all patents, trademarks, copyrights and licenses that Seller owns or possesses or otherwise has rights to use pertaining to the Business, except for standard "shrink wrapped, off the shelf" or "click-wrap" software including the jurisdictions in which each such item has been issued or registered and the registration date. No licenses, sublicenses, covenants or agreements have been granted or entered into by the Seller in respect of the items listed in Schedule 3.04(e) of the Disclosure Schedule except as noted thereon. The Seller has not received any notice of infringement, misappropriation or conflict from any other Person with respect to such Proprietary Information except as noted in Schedule 3.04(e) of the Disclosure Schedule, and, to the Knowledge of Seller, the conduct of the Business has not infringed, misappropriated or otherwise conflicted with any Proprietary Rights of any such Person. The Seller has not given indemnification for patent, trademark, service mark or copyright infringements except to licensees or customers in the ordinary course of business. All of the Proprietary Information that is owned by the Seller is owned free and clear of all Liens except as set forth in Schedule 3.04(e) of the Disclosure Schedule and Permitted Liens. All Proprietary Rights that are licensed by the Seller to third parties are licensed pursuant to valid and existing license agreements and such interests are not subject to any Liens other than those under the applicable license agreements. To the Knowledge of the Seller, the consummation of the transactions contemplated by this Agreement will not result in the loss of any Proprietary Information. To the Knowledge of Seller, the present business practices, methods and operations of Seller regarding the Proprietary Information does not infringe, constitute an unauthorized use of, misappropriation or violate any copyright, mark, patent, trade secret or other similar right of any Person. Except with respect to licenses and fees related to commercial off-the-shelf software, Cribmaster and Activant, Seller is not obligated, required or under any liability whatsoever to make any payments by way of royalties, fees or otherwise regarding the Proprietary Information.

(f) Other than the Facilities, there is no real property or interest in real property owned or leased by Seller for use in the Business or in connection with the Transferred Assets. Schedule 14.20 of the Disclosure Schedule sets forth a complete list of the Facilities leased by Seller, including a legal description of the Facilities (including the name of the lessor

and the date of the lease and all amendments thereto). There is not any event of default regarding said Facilities. To the Knowledge of Seller, said leased real property is not subject to any rights of first refusal or options to purchase except as set out in the leases. All of the Facilities are in good operating condition (ordinary wear and tear excepted) without structural defects and all mechanical and other systems are in good operating condition and no condition exists that requires repairs, alterations or corrections. To the Knowledge of Seller, all of the Facilities have certificates of occupancy and permits necessary or useful for the current use and operation. The Seller has a valid, binding and enforceable leasehold interest for all the Facilities and Seller is not in default under any of the leases for the Facilities and no circumstance exists or event has occurred that would result in a default.

(g) Except for the current leases for the Facilities, the Seller owns or has rights to use, and is transferring to the Buyer hereunder, all tangible assets necessary for the conduct of the Business in the ordinary course. Other than the Business only conducted at a customer's location, the conduct of the Business in the ordinary course is not dependent upon the right to use the property of others, except such property as is leased or licensed by Seller, as specifically set out in this Agreement, or otherwise assignable or transferable to Buyer pursuant to and included in the Transferred Assets.

### 3.05 Contracts and Commitments .

(a) Other than leases for the Facilities and as otherwise set forth in Schedule 1.04(f), Schedule 1.05 and Schedule 3.05(a) of the Disclosure Schedule, none of the Transferred Assets are subject to, and the Seller is not a party to or bound by:

- (i) any agreement, contract or commitment requiring the expenditure or series of related expenditures of funds in excess of \$10,000 in any fiscal year (other than purchase orders in the ordinary course of business for goods necessary for the Seller to complete then existing contracts or purchase orders);
- (ii) any agreement, contract or commitment requiring the payment for goods or services whether or not such goods or services are actually provided or the provision of goods or services at a price less than the Seller's cost of producing or supplying such goods or providing such services;
- (iii) any loan or advance to, or investment in, any Person or any agreement, contract, commitment or understanding relating to the making of any such loan, advance or investment;
- (iv) any contract, agreement, indenture, note or other instrument relating to the borrowing of money or any guarantee or other contingent liability in respect of any indebtedness or obligation of any Person (other than the endorsement of negotiable instruments for deposit or collection in the ordinary course of business);
- (v) any management service, employment, consulting or other similar type contract or agreement;
- (vi) any agreement, contract or commitment that would limit the freedom of the Buyer or any affiliate thereof following the Closing Date to engage in any line of business, to own, operate, sell, transfer, pledge or otherwise dispose of or encumber any of the Transferred Assets or to compete with any Person or to engage in any business or activity in any geographic area;
- (vii) any agreement, lease, contract or commitment or series of related agreements, leases, contracts or commitments not entered into in the ordinary course of business or, except for agreements to purchase or sell goods and services entered into in the ordinary course of business of the Seller, not cancelable by the Seller without penalty to the Seller within 30 calendar days;
- (viii) other than in respect of the Seller's customary general warranty for goods sold as described on Schedule 3.13 (a) to the Disclosure Schedule, any agreement or contract obligating the Seller or that would obligate or require any subsequent owner of the Business or any of the Transferred Assets to provide for indemnification or contribution with respect to any matter;
- (ix) any sales, distributorship or similar agreement relating to the products sold or services provided by the Seller;
- (x) any license, royalty or similar agreement;
- (xi) except for multi-year customer contracts (which may or may not be assignable), any contract requiring performance by Seller for a period of one year or more or requiring Seller to purchase or sell a stated portion of its requirements or outputs.

(b) To the Knowledge of Seller, Seller is not in breach of any provision of, or is in default (or knows of any event or circumstance that with notice, or lapse of time or both, would constitute an event of default) under the terms of any of the Contracts and Other Agreements that constitute a part of the Transferred Assets. To the Knowledge of Seller, all of the Contracts and Other Agreements that constitute a part of the Transferred Assets are in full force and effect and are legal, valid and binding and are enforceable in accordance with their terms. To the Knowledge of Seller, there are no pending or threatened defaults, breaches or disputes with respect to any of the Contracts and Other Agreements.

(c) Except for customer contracts, purchase orders, software license and maintenance agreements that are not assignable, to the Knowledge of the Seller, the enforceability of the Contracts and Other Agreements that constitute a part of the Transferred Assets will not be affected in any manner by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby and none of the Contracts and Other Agreements that constitute a part of the Transferred Assets require the receipt of the consent or waiver of any Person or Governmental Entity prior to the sale, assignment, transfer, conveyance or delivery thereof pursuant to this Agreement.

### 3.06 Financial Statements .

(a) Attached as Schedule 3.06 to the Disclosure Schedule are true, correct and complete copies of (i) the reviewed Balance Sheets, Statements of Income and Members' Equity Statements of Cash Flows and Other Reviewed Financial Information as of December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2010 ("Annual Financials"), and monthly and year-to-date balance sheets, statements of income and Members' equity statements of cash flow of the Seller regarding the Business for the period ended July 31, 2011. Prior to the Closing Date, Seller shall deliver to Buyer monthly and year-to-date balance sheets, statements of income and Members' equity statements of cash flow of the Seller regarding the Business for the period ended August 31, 2011 (all such balance sheets, statements of income and Members' equity statements of cash of the Seller described above collectively referred to in this Agreement as the "Financial Statements").

The Financial Statements:

- (i) except as shown on Schedule 3.06(a), the Financial Statements fairly present the financial position of the Business as of their respective dates and the results of operations of the Business for the periods indicated therein and based on and in line with generally accepted accounting principles applied on a consistent basis and which will be adjusted for any non-recurring and/or one-time expenses as reflected on Schedule 3.06(a) which will be agreed to by Seller and Buyer;
- (ii) the Annual Financials have been reviewed or compiled, as applicable, by Mengel Metzger Barr & Co., LLP in accordance with the Statements and Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants based on and in line with generally accepted accounting principles applied on a consistent basis throughout the periods covered by the Financial Statements; and
- (iii) all the financial books, records and accounts of the Seller are accurate and complete and are maintained in all material respects in accordance with best accounting and business practices and all applicable federal, state and local laws, statutes, codes, ordinances, rules, regulations, orders or other requirements.

(b) The values at which the accounts receivable carried on the Financial Statements are net of write-offs for accounts receivable more than 90 days past due or otherwise doubtful. Except as set forth in Schedule 3.04(c), the values at which the Inventories are carried on the Financial Statements are net of unsaleable, defective, damaged, not in good condition, fail to meet government or industry standards, are slow moving (any item that turns less than once during any 365 day period) or obsolete.

### 3.07 Taxes .

(a) All Tax Returns that are required to be filed (taking into account all extensions) on or before the Closing Date for, by, on behalf of or with respect to the Seller, including, but not limited to, those relating to the Business, the Transferred Assets and the Assumed Liabilities, and those which include or should include the Seller, the Business, the Transferred Assets or the Assumed Liabilities, have been or will be timely filed with the appropriate foreign, federal, state and local authorities on or before the Closing Date, and all Taxes shown to be due and payable on such Tax Returns or related to such Tax Returns have been or will be timely paid in full on or before the Closing Date;

(b) All such Tax Returns and the information and data contained therein have been or will be properly and accurately prepared and completed in all respects, fairly present or will fairly present the information purported to be shown therein, and reflect or will reflect all liabilities for Taxes for the periods covered by such Tax Returns;

(c) None of such Tax Returns are now under audit or, to the Knowledge of Seller, examination by any foreign, federal, state or local authority and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment or collection of any Tax or deficiency of any nature against the Seller, the Business or the Transferred Assets, or with respect to any such Tax Return, or any suits or other actions, proceedings, investigations or claims now pending or threatened against the Seller, the Business or the Transferred Assets with respect to any Tax, or any matters under discussion with any foreign, federal, state or local authority relating to any Tax, or any claims for any additional Tax asserted by any such authority;

(d) All Tax Returns that are required to be filed on behalf of or with respect to the Seller, the Business, the Transferred Assets and the Assumed Liabilities will be timely filed with the appropriate federal, state and local authorities on or before their due date. All Taxes due and owing from the Seller or assessed and due and owing against the Business or the Transferred Assets before the Closing Date have been or will be timely paid in full on or before their due date;

(e) The Transferred Assets are not, and on the Closing Date will not be, subject to or liable for any special assessments or similar types of impositions; and

(f) All withholding Tax and Tax deposit requirements imposed on the Seller and applicable to the Business for any and all periods prior to the Closing Date have been or will be timely satisfied in full (consistent with Buyer's obligation in Section 1.04 (c) hereof).

3.08 No Violations or Litigation .

(a) The Seller, the Transferred Assets and the Business are in compliance, in all material respects, with all federal, state and local laws, statutes, codes, ordinances, rules, regulations, orders or other requirements. To the Knowledge of Seller, Seller is currently not in violation of, and the consummation of the transactions contemplated hereby will not cause any violation of, any order of any Governmental Entity or any law, ordinance, regulation, order, requirement, statute, rule, permit, concession, grant, franchise, license or other governmental authorization relating or applicable to the Seller, the Business or to any of the Seller's properties, assets or operations, including without limitation, the Transferred Assets.

(b) Except as set out in Schedule 3.08(b), there is no action, suit, claim, investigation or legal, administrative, arbitration or other proceeding, or governmental investigation or examination, or any change in any zoning or building ordinance pending or, to the Knowledge of Seller, threatened against or affecting the Seller, its Managers, officers or employees, the Business or any of the Transferred Assets, at law or in equity, before or by any Governmental Entity and, to the Knowledge of Seller, no basis exists for any such action, suit, claim, investigation or proceeding.

3.09 No Adverse Changes or Events . Other than as set forth on Schedule 3.09 to the Disclosure Schedule, since December 31, 2010, the Business has been consistently operated only in the ordinary course and there has not been:

(a) any adverse change or any occurrence, circumstance or combination thereof that might reasonably be expected to have an adverse change in the financial condition, assets, liabilities (contingent or otherwise), results of operations, business or prospects of the Seller before or after the Closing Date;

(b) any damage, destruction or loss, whether or not covered by insurance, adversely affecting the Transferred Assets or the Business having a replacement cost of more than \$5,000 for any single loss or \$25,000 for all such losses;

(c) any salary increases, bonuses, sales commissions and sales draws which are not consistent with past practice, or any payment or accrual of, or commitment with respect to, any bonus plan, vacation pay, sick leave, deferred compensation, insurance, pension, salary continuation for disability or severance or termination arrangement that is not consistent with past practice or any change or modification to any severance arrangement or any agreement to increase the coverage or benefits available under any employee benefit plan or arrangement which are not consistent with past practice;

(d) any debt, obligation, mortgage, security interest or liability incurred by the Seller, any assumption, guarantee, endorsement or other responsibility by the Seller for the liability or obligation of any other Person (whether absolute, accrued, contingent or otherwise), or any engagement in any other transaction by the Seller other than in the ordinary course of business, except that certain unsecured note dated September 28, 2011 executed by Seller and payable to Jasco Tools, Inc.;

(e) any mortgage, pledge or creation of any Lien with respect to any of the Transferred Assets other than Permitted Liens;

(f) any sale, assignment, transfer or other disposition or lapse of any Proprietary Rights or disclosure to any Person (other than employees of the Seller in the scope of their employment) of any Proprietary Rights;

(g) any write up or write down in the value of any Equipment (other than depreciation in conformance to Seller's existing depreciation schedules used in the Financial Statements) or any write up or write down in the value of Inventories which are not consistent with past practices;

(h) any cancellation or compromise of any claims, or any waiver of any other rights relating to the Business, or any sale, transfer or other disposition of any properties or assets, real, personal or mixed, tangible or intangible, of the Business (other than sales of Inventories in the ordinary course of business);

(i) any change in the Seller's method of accounting for financial, Tax or other purposes;

(j) any change in the customary methods used in operating the Business (including the pricing practices) or any change in the sales operations, including but not limited to promptly paying or discharging current liabilities;

(k) any commitment to make any capital expenditures in respect to the Business;

(l) instituted or settled any legal proceeding;

(m) any grant of a license or sublicense of any rights under or with respect to any Proprietary Information; or

(n) any settlement or compromise of any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes.

3.10 Environmental Matters. Other than as set forth on Schedule 3.10 to the Disclosure Schedule:

(a) to the Knowledge of Seller, Seller has not caused or allowed the generation, use, treatment, storage, or disposal of Hazardous Materials at any site or facility owned, leased or operated by the Seller including but not limited to the Facilities or used in the Business except in accordance with all applicable Environmental Laws and would not result in any liability, contingent or otherwise, to the Buyer or its affiliates;

(b) to the Knowledge of Seller, the Seller does not own or lease any real property, improvements or related assets that form a part of the Transferred Assets or the Business that have been subject to the release of any Hazardous Materials;

(c) the Seller has secured all Environmental Permits necessary to the conduct of the Business and the operations and the Seller is in compliance with such permits;

(d) the Seller has not received any notice concerning any proposal to amend, revoke or replace any Environmental Permit, or requiring the issuance of any additional Environmental Permit, and to the Knowledge of Seller no such proposal exists;

(e) the Seller has not received inquiry or notice and, to its Knowledge, has no reason to suspect or believe it will receive inquiry or notice of any actual or potential proceedings, claims, lawsuits or losses related to or arising under any Environmental Law;

(f) the Seller is not currently operating or required to be operating under any compliance order, schedule, decree or agreement, any consent decree, order or agreement, and/or corrective action decree, order or agreement issued or entered into under any federal, state or local statute, regulation or ordinance regarding the environment and/or health or safety in the work place;

(g) the Seller has not transported, arranged for the transportation of or disposed of any substance in a manner that may lead to claims against the Buyer for clean-up costs, remedial work, damages to natural resources or for personal injury claims; and

(h) Seller has provided to Buyer all environmentally related audits, studies, reports, analyses and results of investigations that have been performed with respect to any currently or previously owned, leased or operated properties of Seller or of the Business.

3.11 Related Party Transactions. Except as specifically set out in this Agreement or on Schedules 1.02 or 3.11 to the Disclosure Schedule or that one certain unsecured note dated September 28, 2011 executed by Seller and payable to the order of Jasco Tools, Inc., no employee, officer, Manager or Member of Seller, any member of any of their immediate family or any of their respective affiliates (i) owes any amount to Seller nor does Seller owe any amount to or has Seller committed to make any loan or extend or guarantee credit to or for the benefit of such persons, (ii) is involved in any business arrangement or other relationship with Seller, (iii) owns any property or right, tangible or intangible, that is used by Seller, (iv) has any claim or cause of action against Seller or the Business, or (v) owns any direct or indirect interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any Person which is a supplier, customer, creditor or debtor of Seller or the Business other than Jasco Tools, Inc. and Jasco Heat Treating, Inc.

3.12 Undisclosed Liabilities. The Seller does not have any liabilities or obligations of any nature, whether accrued, absolute, contingent, unliquidated, civil, criminal or otherwise, and whether due or to become due, other than liabilities that (a) are reflected or reserved against in the December 31, 2010 Balance Sheet, (b) are disclosed in any Schedule (or in any plan, instrument, lease or agreement referred to therein) or Exhibit hereto, (c) are liabilities incurred since December 31, 2010 in the ordinary course of business.

3.13 Warranties, Product Liability and Insurance.

(a) Except for warranties implied by law and the Seller's customary warranty for goods sold as described on Schedule 3.13(a), the Seller has not given or made any warranties in connection with the sale or rental of goods or services, including, without limitation, warranties covering the customer's consequential damages. To the Knowledge of Seller, there are no facts or the occurrence of any event forming the basis of any present claim against the Seller with respect to warranties relating to products sold or distributed by the Seller or services performed by or on behalf of the Seller. To Seller's Knowledge, Seller has not sold any products or delivered any services that included a warranty for a period longer than one year. To the Knowledge of Seller, (i) Seller has not committed any act or failed to commit any act which would result in, and there has been no occurrence which would give rise to or form the basis of, any product liability or liability for breach of warranty on the part of Buyer with respect to the products assembled, delivered, sold or installed or services rendered by or on



behalf of Seller or the Business, and (ii) each of the products sold by Seller is and has been fit for the purposes for which it was intended to be used and conforms to any promises or affirmation of fact made on the label for the products or in connection with the sale of the products.

(b) To the Knowledge of Seller, there is no state of facts or any event forming the basis of any present claim against the Seller not fully covered by insurance, except for deductibles and self-insurance retentions, for personal injury or property damage alleged to be caused by products shipped or services rendered by or on behalf of the Seller.

3.14 Employee Matters.

(a) There are no collective bargaining or other labor union agreements to which the Seller is a party or by which it is bound. To the Knowledge of Seller, neither Seller nor the Business has encountered any labor union organizing activity or had any actual or threatened employee strikes, work stoppages, slowdowns or walkouts.

(b) The Seller does not contribute to or have an obligation to contribute to, and has not at any time within six years prior to the Closing Date contributed to or had an obligation to contribute to, a multi-employer plan within the meaning of Section 3(37) of ERISA.

(c) The Seller does not have any defined benefit pension that is subject to Title IV or Section 412 of the Code. Seller does have employee benefit plan(s) established pursuant to Section 401(k) of the Code and such plan(s) has been maintained in all respects in accordance with its terms and the provisions of applicable law. Except as disclosed in this Agreement, Seller does not have a profit sharing plan. Other than the foregoing, Seller does not maintain any other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended.

(d) No lawsuit, complaint or investigation or governmental audit has been noticed, initiated or filed with respect to any employee benefit plan. The Seller has not incurred any liability to the PBGC or any liability under ERISA. There has not been any reportable event as defined in ERISA which would require the giving of notice or any event requiring the giving of notice to be provided.

(e) Schedule 3.14.(e) to the Disclosure Schedule sets forth a complete and correct list of the salaries and hourly rates for all employees, as applicable, bonus arrangements for all employees, and a list of all employee benefit plans and all other employee benefit arrangements or payroll practices maintained by Seller or to which Seller contributed or is obligated to contribute thereunder for current or former employees of the Seller or that cover employees of Seller. All items listed on Schedule 3.14.(e) to the Disclosure Schedule have been maintained in all material respects in accordance with their terms and the provisions of applicable law.

(f) Any individual who performs services for Seller and who is not treated as an employee for federal income tax purposes by Seller is not an employee for such purposes.

3.15 Intentionally omitted.

3.16 Customers and Suppliers. Except as set out in Schedule 3.16, since December 31, 2010, no material customer or supplier of the Business has either terminated its relationship with the Business or has materially reduced or changed the pricing or has materially changed any other terms of its business with the Business and no material customer or supplier of the Business has notified Seller that it intends to terminate or reduce or change the pricing or other terms of its business with the Business. Schedule 3.16 sets forth a list of the twenty (20) largest customers and ten (10) largest suppliers of Seller, as measured by dollar amount of purchases during the years 2009 and 2010.

3.17 Seller Acknowledgement. The Seller acknowledges that the covenants contained in Sections 7.7 and 7.10 hereof are a material element of this Agreement and that Buyer would not have entered into this Agreement or purchased the Business or the Transferred Assets without the Seller's agreement to honor the provisions of Sections 7.7 and 7.10.

3.18 Brokers. Seller has only employed Versailles Group, Ltd. ("Versailles") in connection with the sale or transfer of the Business, the Transferred Assets, Assumed Liabilities and the Retained Liabilities, and Seller shall be responsible for any and all fees, commissions and expenses of Versailles and Seller shall be responsible for any and all fees, commissions and expenses of any other person or party claiming such a fee, commission or expense related to the transfer and acquisition set out in this Agreement by, through or under Seller.

3.19 Certain Payments. To the Knowledge of Seller, neither the Seller nor any Manager, officer, employee, or other Person associated with or acting on behalf of any of them, has directly or indirectly (a) made in violation of any Law any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business for the Seller, (ii) to pay for favorable treatment for business secured by the Seller, (iii) to obtain special concessions or for special concessions already obtained, for or in respect of the Seller, or (b) established or maintained any fund or asset with respect to the Seller that has not been recorded in the books and records of the Seller.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows:

4.01 Corporate Matters. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. The Buyer has the requisite corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement. This Agreement and all other agreements and documents specified herein have been duly authorized, executed and delivered by the Buyer and is a legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies. The execution and delivery of this Agreement, the Seller Note and the other agreements and documents to be delivered by the Buyer, the consummation of the transactions contemplated hereby and thereby and the compliance with the provisions hereof and thereof, by the Buyer will not, with or without the passage of time or the giving of notice or both, violate any provision of, or constitute a default under, any contract or other agreement to which the Buyer is a party or by which it is bound, conflict with its articles of incorporation or bylaws, other than violations, defaults or conflicts that would not affect the ability of the Buyer to consummate the transactions provided for in this Agreement or in any other agreement or document specified herein. Buyer has or will have the funding necessary to pay the Purchase Price on the Closing Date.

4.02 Conflicts. The execution, delivery and performance of this Agreement and the other agreements and documents to be delivered by the Buyer to the Seller and the Managers and Members, the consummation of the transactions contemplated hereby or thereby, and the compliance with the provisions hereof or thereof, by the Buyer will not, with or without the passage of time or the giving of notice or both violate any law, statute, ordinance, regulation, judgment, writ, injunction, rule, decree, order or any other restriction of any kind or character applicable to the Buyer or any of its respective properties or assets.

4.03 Litigation. There is no action, claim, suit or proceeding pending, or to the Buyer's knowledge threatened, by or against or affecting Buyer that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with the transaction contemplated by this Agreement or of any action taken or to be taken in connection herewith or the consummation of the transaction contemplated hereby.

4.04 Brokers. Buyer has not employed any person or entity in connection with the purchase or transfer of the Business, the Transferred Assets or the Assumed Liabilities or in connection with this Agreement. Buyer shall be responsible for any and all fees, commissions and expenses of any other person or party claiming such a fee, commission or expense related to the transfer and acquisition set out in this Agreement, by, through or under Buyer.

## ARTICLE V

### ACCESS TO INFORMATION BY THE BUYER

5.01 Prior to Closing. Until the Closing Date and pursuant to the terms and conditions of the Confidentiality Agreement executed by the Versailles Group, Ltd. as authorized agent for Seller and Buyer dated May 19, 2011 ("the CA"), the Seller will furnish the Buyer and its employees, officers, accountants, attorneys, agents, investment bankers and other authorized representatives with all books, records, financial information, contracts, and other data and information concerning the Business, commitments, personnel and properties and Facilities of the Seller as the Buyer shall from time to time reasonably request and will afford the Buyer and its employees, officers, accountants, attorneys, agents, investment bankers and other authorized representatives reasonable access during normal business hours to the Seller's offices, properties, books, records, financial information, contracts and documents (including Tax Returns filed and those in preparation) and will be given the opportunity to ask questions of, and receive answers from, representatives of the Seller with respect to the Business, the Transferred Assets and the other properties of the Seller ("the Inspection"). All investigation on Seller's property or with employees of Seller must be conducted in the presence of a representative of Seller (each representative of Seller shall use their good faith efforts to be available as requested by Buyer). No investigations by the Buyer or its employees, representatives or agents shall reduce or otherwise affect the obligation or liability of the Seller with respect to any representations, warranties, covenants or agreements made herein or in any Exhibit, Schedule or other certificate, instrument, agreement or document, including the Disclosure Schedule, executed and delivered in connection with this Agreement. The Seller will cooperate with the Buyer and its employees, officers, accountants, attorneys, agents and other authorized representatives in the preparation of any documents or other materials that may be required by any Governmental Entity.

5.02 Public Information. Until the Closing Date or termination hereof, the Buyer and the Seller will consult in advance on the necessity for, and the timing and content of, any communications to be made to the public and to the form and content of any application or report to be made to any Governmental Entity that relates to the transactions contemplated by this Agreement, except with respect to public announcements or disclosures in response to legal requirements (including, without limitation, requirements under the Federal securities laws).

## ARTICLE VI

### EMPLOYEE MATTERS

6.01 Hiring of Transferred Employees. The Buyer shall offer employment (on an "at will basis", except for employees that are offered an Employment Agreement, if any) to all of the Seller's active hourly employees and to all of Seller's active salaried employees as of the Closing, which are listed on Schedule 6.02(b) (all individuals who accept such offer are collectively, the "Transferred Employees"). The Buyer

shall not assume any liabilities or obligations of the Seller with respect to its employees except as specifically set forth in this Agreement, and the Buyer will have complete discretion as to the terms of employment that are offered to the Transferred Employees. Nothing contained in this Section 6.01 is intended to confer upon any of the Seller's employees any right to continued employment after the Closing Date. Notwithstanding any other provision of this Agreement, the parties hereto do not intend to create any third-party beneficiary rights respecting any of the Seller's employees or former employees as a result of the provisions herein and specifically hereby negate any such intention.

#### 6.02 Employee Benefits.

(a) Except as set forth in Section 6.03 and otherwise provided herein, the Buyer shall not be liable or obligated under any employee benefit plan or for any other employee benefits that may have been established by the Seller for the Seller's employees prior to the Closing, and the Seller expressly acknowledges that it has sole liability for all employee benefit costs accrued as of the day before the Closing Date whether or not any or all of such employees are subsequently hired by the Buyer. Without limiting the generality of the foregoing, the Seller acknowledges and agrees that the Buyer does not assume the sponsorship of, the responsibility of contributions to, or any liabilities in connection with any employee benefit plan maintained by the Seller for active employees, retirees, former employees, their beneficiaries or any other Person, including any employee pension benefit plan within the meaning of ERISA, employee welfare plan within the meaning of ERISA and any personnel policy, stock option plan, bonus or profit sharing plan or arrangement, incentive award plan or arrangement, vacation policy, severance pay plan, policy or agreement, deferred compensation agreement arrangement, executive compensation or supplemental income arrangement, consulting agreement, employment agreement and each other employee benefit plan, agreement, arrangement, program, practice or understanding.

(b) With respect to the Transferred Employees the Seller will remain responsible for medical expenses covered under its plans (i) actually incurred prior to the Closing Date (as required under such plans) or (ii) actually incurred with respect to any hospitalization that began prior to the Closing Date until such hospitalization ends (as required under such plans), and the Buyer will be responsible for all other medical expenses incurred on or after the Closing Date to the extent covered under its plans without the application of any waiting period for coverage generally applicable to newly hired employees. To the fullest extent permitted under its applicable policies of insurance and under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") and to the extent required by applicable law, the Seller shall continue to maintain medical, health, hospitalization, life, travel and accident insurance coverage for the Transferred Employees in effect for so long as Buyer shall request in order to avoid any lapses in such coverages; *provided, however*, that Buyer shall be responsible for all premium costs of maintaining such policies for all applicable periods commencing with the Closing Date. Seller's cost of such insurance and costs of COBRA coverage from and after the Closing Date shall be borne by the Buyer and Buyer agrees to reimburse Seller for such costs or expenses within thirty (30) days after receipt from Seller of proof of payment of such costs or expenses. The Seller shall cooperate with the Buyer to provide continuity of such insurance coverage to the Transferred Employees. Set out in Schedule 6.02(b) of the Disclosure Schedule is the list of all employees, their salary or hourly rate (as applicable), annual vacation days and annual sick/personal days.

6.03 Severance Benefits; Employment Termination. Buyer and Seller hereby agree that Buyer shall assume Seller's obligation to make COBRA Coverage (as hereinafter defined) available to all of Seller's qualified beneficiaries, as such term is defined by COBRA (26 U.S.C. § 4980B(g)(1) and 29 U.S.C. § 1167(3)) (the "M+A Qualified Beneficiaries") in accordance with the provisions of COBRA (as hereinafter defined) and, accordingly, Buyer shall cause its group health plan to make COBRA Coverage available to the M+A Qualified Beneficiaries. For purposes of this Section, the term "COBRA Coverage" means the health insurance coverage required to be offered pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), 26 U.S.C. §§ 4980B et seq., and 29 U.S.C. §§ 1162 – 1167. The Buyer agrees to provide severance benefits, only in accordance with Buyer's policies and procedures, to the Transferred Employees.

6.04 Reporting of Data. The Buyer and the Seller shall complete and furnish to each other such other employee data as shall be reasonably required from time to time for each party to perform and fulfill its obligations under this Article VI. Seller and Buyer shall report on a predecessor/successor basis as set forth under any IRS revenue procedure including the filing of Form W-2 for each Transferred Employee.

6.05 Employment Related Claims. Except as provided in Section 6.03, the Seller agrees that the Seller and not the Buyer shall be solely responsible for all liability, costs and expenses (including attorneys' fees) for all existing employment claims that have been filed by any employee or former employee of the Seller prior to the Closing Date relating to arbitrations, unfair labor practice charges, employment discrimination charges, wrongful termination claims, workers' compensation claims, any employment-related tort claim or other claims or charges of or by employees of the Seller, or any thereof filed after the Closing Date but arising as a result of conditions, actions or events or series of actions or events which occurred prior to the Closing Date. The Buyer agrees that it shall be responsible for all liability, costs and expenses (including attorneys' fees) for all employment claims that are filed by any Transferred Employee relating to arbitrations, unfair labor practice charges, employment discrimination charges, wrongful termination claims, workers' compensation claims, any employment-related tort claim or other claims or charges of or by the Transferred Employees to the extent, but only to the extent, that the same result from the employment relationship between the Buyer and the Transferred Employee and conditions, actions or events or series of actions or events occurring on and subsequent to the Closing Date. Seller shall pay Transferred Employees their accrued and unused vacation through the day before the Closing Date. Effective as of the Closing Date, Seller shall cause the tax-qualified 401(k) plans in which the Transferred Employees were eligible to participate immediately prior to the Closing Date to fully vest such employees' accrued benefit thereunder through the day before the Closing Date.

## ARTICLE VII

### ADDITIONAL AGREEMENTS

7.01 Conduct of the Business. The Seller covenants and agrees with the Buyer that from and after the Effective Date until the Closing, except as expressly authorized by this Agreement or expressly consented to in writing by the Buyer and the Seller shall, and to the extent the same would affect the Proprietary Rights:

- (a) operate the Business and the Transferred Assets only in the usual, regular and ordinary course of business with a view to maintaining the goodwill that the Seller now enjoys and, to the extent consistent with such operation, will use all reasonable efforts to preserve intact its present business organization, keep available the services of its employees and preserve its relationships with its customers, suppliers, jobbers, distributors and other Persons having business relations with it;
- (b) use all reasonable efforts to maintain the Transferred Assets in a state of repair, order and condition consistent with its ordinary course of business in connection with the Business;
- (c) maintain its books of account and records relating to the Business in the ordinary course of business, in accordance with the Seller's usual accounting practices applied on a consistent basis;
- (d) comply with all statutes, laws, orders and regulations applicable to it and to the conduct of the Business;
- (e) not sell, assign, transfer, lease or otherwise dispose of any Proprietary Rights, Equipment or any of the other Transferred Assets except for dispositions of Inventories for value in the usual and ordinary course of business or other than to the Buyer pursuant to the terms of this Agreement;
- (f) preserve and maintain all rights that it now enjoys in and to the Proprietary Rights and not sell, assign, transfer, lease or otherwise dispose of any Proprietary Rights other than to the Buyer pursuant to the terms of this Agreement;
- (g) not mortgage, pledge or otherwise create a security interest in any of the Transferred Assets or permit there to be created or exist any Liens thereon other than Permitted Liens;
- (h) not enter into any contract, commitment or lease in relation to the Business that is out of the ordinary course of the Business or, if effective on the date hereof, would be required to be disclosed in Schedule 3.05(a) of the Disclosure Schedule;
- (i) not amend or modify any of the Contracts and Other Agreements disclosed in Schedule 3.05(a) of the Disclosure Schedule or any other contract, commitment, lease or other agreement that would, if entered into on the date hereof, be required to be disclosed on any Schedule to this Agreement, including the Disclosure Schedule;
- (j) not consent to the termination of any of the Contracts and Other Agreements disclosed in Schedule 3.05(a) of the Disclosure Schedule or waive any of the Seller's rights with respect thereto;
- (k) not grant any increase in the compensation or rate of compensation or commissions or bonuses payable to or severance obligations for any of employees or in any bonus plan and not transfer or otherwise change any of the terms or conditions of employment of any of the employees except the bonuses contemplated in Section 3.14(e);
- (l) not permit any insurance policy naming it as a beneficiary or a loss payee relating to the Business or the Transferred Assets to be canceled or terminated or any of the coverage thereunder to lapse unless simultaneously with such termination or cancellation replacement policies providing substantially the same coverage are in full force and effect; and
- (m) pay when due all accounts payable, all payments required by any of the Contracts and Other Agreements, and all Taxes other than Taxes that are being contested in good faith and for which adequate reserves against the Transferred Assets exist and which would not result in a Lien being imposed on any of the Transferred Assets.

7.02 Information and Consents

. Seller shall use its reasonable efforts to obtain at the earliest practicable date any consents, waivers, approvals and notices that are required to consummate, or in connection with the transactions contemplated by this Agreement. All such consents, waivers, approvals and notices shall be in a form and substance reasonably satisfactory to Buyer.

7.03 Compliance.

- (a) The Seller shall use its commercially reasonable efforts (i) to cause the obligations imposed upon it in this Agreement to be duly complied with, and all conditions precedent to such obligations to be satisfied.
- (b) Except for Permitted Liens or as otherwise specifically set out in this Agreement, the Seller shall cause all Liens on the Transferred Assets to be released as of the Closing Date.

7.04 Delivery of Corporate Documents. On the Closing Date, Seller shall deliver to the Buyer all Documents and Other Papers

relating to the Transferred Assets, the Assumed Liabilities and the current and proposed operations of the Business (other than Excluded Assets), including, without limitation, all files relating to the Trade Payables, computer programs, files, disks reflecting any books or records, documents or other papers, or other information or data relating to the operation of the Business or the Transferred Assets or customer records and sales history stored on any electronic media, including computers in its possession. The Seller, however, shall be entitled to retain the historical books and records relating to the Business to the extent such books and records are not necessary for the ongoing operations of the Business by the Buyer. The Seller agrees that so long as the company's accounting, auditing and tax books, records (including work papers) and other books and records relating to the Seller, the Business and the Transferred Assets, the Transferred Employees and the Assumed Liabilities remain in existence and in the possession of the Seller, the Buyer and its authorized representatives shall have the right to inspect and, at the Buyer's expense, to copy the same at any time during regular business hours for any proper purpose. For a period of five (5) years following the Closing Date, the Seller agrees that it will not destroy any of such books and records without having first offered to deliver the same to the Buyer.

7.05 Further Assurances. Prior to and on and after the Closing Date, Seller shall execute, acknowledge and deliver or cause to be executed, acknowledged and delivered to the Buyer such bills of sale, assignments and other instruments of transfer, assignment and conveyance, in form and substance reasonably satisfactory to counsel for the Buyer, as shall be necessary to vest in the Buyer all the right, title and interest in and to the Transferred Assets free and clear of all Liens (including the release of all Liens of record) and shall use its reasonable efforts to cause to be taken such other action as the Buyer reasonably may require to more effectively consummate, implement and carry into effect the transactions contemplated by this Agreement.

7.06 Cooperation After Closing.

(a) The Seller and the Buyer shall cooperate with each other after the Closing hereunder in clearing the title to any of the Transferred Assets to the Buyer pursuant hereto in the event that the Seller's title to any such property, as the case may be, as of the Closing Date, shall be defective, not marketable or nonassignable. In this connection, the Seller shall take all commercially reasonable action, including, but not limited to, the furnishing of documents and evidences of title and assistance in the preparation and trial of any necessary litigation, to clear title to any such property, all of which shall be at the expense of the Seller.

(b) For the greater of eight (8) years from the Closing Date and such period as may be required by any statute, regulation or Governmental Entity or any then pending litigation, the Buyer shall permit, the Seller, each Member and their respective representatives reasonable access to the business records and files of the Seller that are transferred to the Buyer in connection herewith in anticipation of, or preparation for, existing or future litigation or claims or any Tax audit which the Seller is involved and which is related to the Business or the Transferred Assets, during regular business hours and upon reasonable notice at the Buyer's principal places of business or at any location where such records are stored; provided, however, that (i) any such access shall be had or done in such a manner so as to not interfere with the normal conduct of the Business, (ii) the Buyer shall not be required to provide access to any confidential record or records, the disclosure of which would violate any governmental statute or regulation or applicable confidentiality agreement with any Person, and (iii) the Buyer shall not be required to provide access to any confidential record or records, the disclosure of which would cause the Buyer or any of its affiliates to waive its attorney-client privilege or attorney work product privilege, it being understood and agreed that the records delivered by the Seller to the Buyer shall not be deemed to be restricted from the Seller or each Member pursuant to either clause (ii) or (iii) above. The Buyer shall also provide the Seller with (i) reasonable access to the Facilities for the purpose of complying with applicable Environmental Laws provided that such access does not interfere with the normal conduct of the Business and (ii) reasonable access to the accounting records and schedules necessary for the preparation of financial reports and tax returns for the year ended December 31, 2010, and for the 2011 accounting period ending on the day before the Closing Date.

(c) For the greater of eight (8) years from the Closing Date and such period as may be required by any statute, regulation or Governmental Entity or any then pending litigation, the Seller shall retain the general business records and files of Seller and shall permit the Buyer and its representatives reasonable access to the general business records and files of the Seller in anticipation of, or preparation for, existing or future litigation or any Tax audit or other reasonable purpose in which the Buyer or any of its affiliates is involved and which is related to the Business or the Transferred Assets, during regular business hours and upon reasonable notice at the Seller's principal places of business or at any location where such records are stored; provided, however, that (i) any such access shall be had or done in such a manner so as to not interfere with the normal conduct of the Seller's business, (ii) the Seller shall not be required to provide access to any confidential record or records, the disclosure of which would violate any governmental statute or regulation or applicable confidentiality agreement with any Person, and (iii) the Seller shall not be required to provide access to any confidential record or records, the disclosure of which would cause the Seller to waive its attorney-client privilege or attorney work product privilege.

(d) The Seller, if requested by the Buyer (and at Buyer's expense), shall cooperate and assist in preparing such financial statements of the Business that the Buyer may reasonably require in order to permit Buyer to timely file any report required by the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder in connection with the transactions contemplated thereby and to comply with any other financial statement requirements with respect to the Business applicable to Buyer under the Securities Exchange Act of 1934, as amended, the Securities Act of 1933, as amended, and the rules and regulations thereunder. The Seller shall cause its accountant to provide the Buyer with reasonable access to such firm's work papers in support of the Business. The cost of such accounting work shall be borne by the Buyer, but the Seller shall use its reasonable efforts to cause its accountant to provide the Buyer with an estimate of its costs. The Seller will also cooperate with and assist the Buyer in preparing, and, if requested, shall use reasonable efforts to cause its accountant to cooperate, at Buyer's expense, in preparing, such other

financial statements for the Business as may be specified by the Buyer.

(e) In furtherance of Sections 1.03(a) hereof, Seller and Buyer shall enter into the Escrow Agreement, as defined in Section 8.03.

(f) Buyer shall continue to provide the existing telephone and internet access within the building at 1001 Lexington Avenue, Rochester, NY 14606 to the area generally known and identified as "Graywood Properties" until December 31, 2011, as long as such access does not include access to the Proprietary Information.

**7.07 Covenants of Nondisclosure of Proprietary Information**. The Seller covenants and agrees that, from and after the Closing Date, Seller shall hold in confidence and will not directly or indirectly at any time reveal, report, publish, disclose or transfer to any Person other than the Buyer any of the Proprietary Information that is not generally known to the public or utilize any of the Proprietary Information for any purpose. The Seller hereby agrees that, upon the Closing and as between Buyer and Seller and each of their respective affiliates, Buyer shall have the sole right to use the names "Kenneth Crosby, Kenneth Crosby New York, Kenneth Crosby Southern Tier, Kenneth Crosby Western New York, Kelley & Gierston Industrial Supply, Kelley & Kelley Industrial Supply and Gierston Tool" or similar names and any service marks, trademarks, trade names, d/b/a names, fictitious names, identifying symbols, logos, emblems or signs containing or comprising the foregoing or otherwise used in the Business and owned by Seller (and Seller shall not, and shall not permit any of its affiliates to, use such name or any variation or simulation thereof). As soon as legally practicable after the Closing (but not later than twenty (20) Business Days after the Closing Date) Seller shall, and shall cause its affiliates to, remove any mark from its legal name by appropriate legal proceedings in the jurisdiction of its incorporation and each jurisdiction where such entity has registered to do business.

Notwithstanding the foregoing, the Seller and its affiliates may disclose information that is (i) required to be disclosed by applicable State or federal tax or securities laws to the extent, and only to the extent, such laws require such disclosure and, to the extent practicable, the Seller provides the Buyer prior written notice of its intent to provide such disclosure and the general text of such disclosure, and (ii) required to be disclosed by final order of a court of competent jurisdiction; provided that, in the event Seller is served or threatened with litigation that would require the Seller to disclose such information, the Seller shall tender to the Buyer the opportunity to defend, at its cost, against such disclosure.

(a) The Seller acknowledges that all documents and objects containing or reflecting any Proprietary Information, whether developed by the Seller or by someone else for it or any of its affiliates, will on the Closing Date become the exclusive property of the Buyer and be delivered to the Buyer.

(b) Because of the unique nature of the Proprietary Information, if any, the Seller understands and agrees that the breach or anticipated breach of its or its affiliates obligations under this Section 7.07 will result in immediate and irreparable harm and injury to the Buyer and its affiliates, for which it will not have an adequate remedy at law, and that the Buyer and its affiliates and their successors and assigns shall be entitled to an injunction, restraining order or other equitable relief to enjoin such breach or anticipated breach and to seek any and all other legal and equitable remedies to which they may be entitled. In the event that Buyer were to seek damages for any breach of this Section 7.07, the portion of the consideration which is allocated by the parties to this covenant shall not be considered a measure or limit on such damages. The Seller acknowledges that this covenant regarding Proprietary Information is being provided as an inducement to the Buyer to acquire the Business and Transferred Assets. The parties agree that if any court of competent jurisdiction determines that any relevant feature of this Section 7.07 is determined to be unreasonable, arbitrary or against public policy then such relevant feature which is determined by the court to be reasonable, not arbitrary and not against public policy may be enforced against the applicable party.

**7.08 Real Property**. On or prior to the Closing Date, Seller shall obtain and deliver to Buyer an executed Landlord Consent to Assignment and Estoppel Certificate, substantially in the form attached hereto as Exhibit "C", from each of the third party lessors of the four (4) Facilities located in Rochester, New York; Syracuse, New York; Falconer, New York; and Corning, New York ("Third Party Leases") as of the Closing Date and Seller and Buyer shall execute the Assignment of Lease substantially in the form attached hereto as Exhibit "F". For Seller's Hopkinton, Massachusetts Facility, Buyer and the landlord will execute a new lease and Seller and the landlord will execute a termination of lease.

**7.09 Warranty Claims**. With respect to any claims made pursuant to warranties to third Persons in connection with products sold or distributed or services provided by the Seller prior to the Closing Date that relate to the Business and that are covered by valid and existing warranties of the Seller, the Buyer agrees to assume and pay for such claims to the extent, but only to the extent, that the Buyer's Damages with respect to all such claims do not exceed in the aggregate Ten Thousand Dollars (\$10,000). Any claims in excess of such amount shall remain part of the Retained Liabilities. The Buyer agrees to provide to Seller, at prices equal to Buyer's out-of-pocket cost, the necessary services so Seller can satisfy any claims made pursuant to warranties of third Persons in connection with products, sold or distributed or services provided by the Seller prior to the Closing Date that relate to the Business and that are covered by valid and existing warranties of the Seller and not assumed by Buyer pursuant to this Section 7.09. The foregoing limitations, however, shall not be deemed in any way to limit the right of the Buyer to seek indemnification from the Seller for any Damages in connection with products, sold or distributed or services provided by the Seller prior to the Closing Date to the extent the Buyer incurs any monetary liability to any third Person with respect to such matters or is obligated to take any action other than that expressly covered by this Section 7.09.

**7.10 Non-Compete and Non-Solicitation**. The Seller covenants and agrees that, effective as of the Closing Date and for a period of seven (7) years thereafter, the Seller shall not, without the prior written consent of the Buyer, directly or indirectly, (i) compete with the Business, (ii) make any contact with, for the purpose of transacting any business competitive to the Business, with any Person which was a customer of Seller at any time in the seven (7) years prior to the Closing Date ("Company's Customers"), (iii) attempt to direct or take away the business or patronage of any of the Company's Customers or suppliers related to the Business, (iv) attempt to have any dealings with the

Company's Customers or suppliers for the purpose of attempting to secure such customers or suppliers or their patronage in competition with the Business, (v) solicit, hire away or attempt to solicit or hire away to any firm or entity engaged in the Business, any person presently employed by Seller, (vi) engage in the Business, (vii) interfere with or molest the business, trade, goodwill, suppliers or customers of the Seller regarding the Business, (viii) directly or indirectly, own, invest in, manage, operate, control, be employed by, consult with or be an agent for, engage or participate in the ownership, management, operation, control or any other engagement of, any business, whether in corporate, proprietorship or partnership form or any other business form, engage in the business of industrial distribution and integrated supply, or (ix) use for Seller's own benefit or the benefit of another or disclose, disseminate, or distribute to another, any trade secrets of the Business. The Seller acknowledges that a remedy at law for any breach or attempted breach of this Section 7.10 will be inadequate and it further agrees that any breach of this Section 7.10 will result in irreparable harm to the Business and to the Buyer and in addition to any other remedy that may be available to Buyer, Buyer shall be entitled to specific performance and injunctive and other equitable relief in case of any such breach or attempted breach. The Seller acknowledges that this covenant not to compete is being provided as an inducement to the Buyer to acquire the Business and the Transferred Assets and that this Section 7.10 contains reasonable limitations as to time, geographical area and scope of activity to be restrained that do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the Buyer. Whenever possible, each provision of this Section 7.10 shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Section 7.10 shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Section 7.10. If any provision of this Section 7.10 shall, for any reason, be judged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Section 7.10 but shall be confined in its operation to the provision of this Section 7.10 directly involved in the controversy in which such judgment shall have been rendered. In the event that the provisions of this Section 7.10 should ever be deemed to exceed the time or geographic limitations permitted by applicable laws, then such provision shall be reformed to the maximum time or geographic limitations permitted by applicable law.

Notwithstanding anything to the contrary contained in this Section 7.10, the limitations contained in this Section 7.10, including specifically the limitations contained in Section 7.10 (i)-(ix) shall have no effect whatsoever upon the Seller, directly or indirectly, to own, invest in, manage, operate, control, be employed by, consult with, be an agent for, engage or participate in the ownership, management, operation, control or any other engagement of, any business, whether in corporate, limited liability company, proprietorship, or partnership form, or any other business form, in any activity directly related only to the Jasco Business.

7.11 Continuation of Business by the Buyer. Nothing in this Section 7.11, in any other provision of this Agreement, in any Exhibit or Section hereto, or in any agreement, instrument, or other document executed or delivered in connection with this Agreement shall require the Buyer to continue its business or operations or to manage and operate the Business with any duty or standard of care to the Seller, the Managers and the Members. The Seller acknowledges and agrees that the Buyer in its sole discretion may continue, manage, modify or discontinue the operations of the Business, liquidate or otherwise change or cease its operations.

## ARTICLE VIII

### CONDITIONS TO THE BUYER'S OBLIGATION

#### TO CONSUMMATE THE TRANSACTIONS

The obligation of the Buyer to purchase the Transferred Assets, to assume the Assumed Liabilities and to consummate the transactions contemplated by this Agreement is, at the option of the Buyer, subject to the satisfaction on or before the Closing Date of the fulfillment of the conditions set forth below, any of which may be waived by the Buyer in writing.

8.01 Representations and Warranties. The representations and warranties of the Seller contained in this Agreement shall be true, correct and complete in all respects; each and all of the agreements and covenants of the Seller to be performed or complied with by it on or before the Closing Date pursuant to this Agreement shall have been performed or complied with and Buyer shall have received copies of such documents evidencing such performance as Buyer may reasonably request.

8.02 Good Standing and Corporate Authorizations. The Seller shall have delivered to the Buyer certificates issued by appropriate Governmental Entities evidencing the good standing of the Seller, as of a date not more than ten (10) calendar days prior to the Closing Date, in the States of New York and Massachusetts.

8.03 Closing Instruments. The Seller, the Managers and the applicable Members, as applicable, shall have executed, acknowledged and delivered to the Buyer (i) the General Conveyance, Transfer, Assignment and Assumption, in substantially the form attached hereto as Exhibit "A", (ii) the Escrow Agreement in the form attached hereto as Exhibit "D", (iii) the Employment Agreements in the form attached hereto as Exhibit "B", (iv) the Landlord Assignment and Estoppel Certificate (Exhibit "C"), (v) the Assignment and Assumption of Lease (Exhibit "F"), (vi) the Closing Agreement executed by certain of the Members regarding non-compete, non-solicitation and non-disclosure provisions in favor of Buyer and indemnification provisions in favor of Buyer in the form attached hereto as Exhibit "I", (vii) the Confidentiality, Non-Compete and Non-Solicitation Agreement between Buyer and Richard J. Maxa, (viii) the Lease Agreement for the Facility located in Hopkinton, Massachusetts, and (ix) any other documents necessary in the reasonable opinion of counsel to Buyer to transfer and assign the Transferred Assets to Buyer. The escrow agent under the Escrow Agreement shall have executed and delivered to the Seller and the Buyer such agreement and the Escrow Agreement shall be in full force and effect as of the Closing Date.

8.04 Amendment to Articles of Organization. The Seller shall, within five (5) Business Days after the Closing Date, have prepared, obtained all necessary corporate authorizations, executed and delivered to the Buyer documents, in form and substance reasonably satisfactory to counsel for the Buyer, sufficient to change the Seller's corporate name to one bearing no resemblance to the Seller's current corporate name.

8.05 No Litigation.

(a) No preliminary or permanent injunction or other order of any court or other Governmental Entity shall be in effect nor shall there be in effect any statute, rule, regulation or executive order promulgated or enacted by any Governmental Entity that, in any such case, prevents the consummation of the transactions contemplated by this Agreement.

(b) No suit, action, claim, proceeding or investigation before any Governmental Entity shall have been commenced or threatened seeking to prevent the consummation of the transactions contemplated by this Agreement.

8.06 Employment Agreements

. Susan Conrado, Tom Kelley and Sue Kelley shall have executed and delivered to Buyer an employment agreement with Buyer in the form attached hereto as Exhibit "B" (the "Employment Agreements").

8.07 Leases. The applicable lessors for each of the Facilities, other than Hopkinton, Massachusetts, shall have executed and delivered to Buyer, the Landlord's Assignment and Estoppel Certificate and the Assignment of Lease as provided in Section 7.08 hereof.

8.08 Other Legal Matters. All Exhibits, Schedules, certificates, documents and legal matters in connection with this Agreement and the transactions contemplated hereby shall be in the forms required by this Agreement.

8.09 Licenses, Consents and Approvals by the Buyer. Other than as contemplated by Section 8.07, the Buyer shall have received each of the licenses, consents, approvals and other authorizations from Governmental Entities and third parties.

8.10 Release of Liens. Seller shall have delivered to the Buyer releases of all Liens, other than Permitted Liens, regarding the Transferred Assets in form and substance reasonably satisfactory to the Buyer.

8.11 Board of Directors. The Board of Directors of Buyer shall have approved and authorized the consummation of the Closing.

ARTICLE IX

CONDITIONS TO THE SELLER'S OBLIGATION

TO CONSUMMATE THE TRANSACTIONS

The obligation of the Seller to transfer the Transferred Assets as contemplated hereby is, at the option of the Seller, subject to the satisfaction on or before the Closing Date of the conditions set forth below, any of which may be waived by the Seller in writing.

9.01 Representations, Warranties and Covenants. The representations and warranties of the Buyer contained in this Agreement shall be true, correct and complete in all respects, and the Buyer shall have performed and complied in all respects with all covenants, obligations and agreements required in this Agreement to be performed or complied with by Buyer on or prior to the Closing Date.

9.02 Receipt of the Purchase Price. The Seller shall have received the Seller Cash Payment and the Escrow Agent shall have received the Escrow Amount.

9.03 Licenses, Consents and Approvals. The Seller shall have received each of the licenses, consents, approvals and other authorizations from Governmental Entities necessary or appropriate for the Seller to consummate the transactions contemplated by this Agreement.

9.04 No Litigation.

(a) No preliminary or permanent injunction or other order of any court or other Governmental Entity shall be in effect nor shall there be any statute, rule, regulation or executive order promulgated or enacted by any Governmental Entity that, in any such case, prevents the consummation of the transactions contemplated by this Agreement.

(b) No suit, action, claim, proceeding or investigation before any court or other Governmental Entity shall have been commenced or threatened seeking to prevent the consummation of the transactions contemplated by this Agreement.

9.05 Closing Instruments. The Buyer shall have executed, acknowledged and delivered to the Seller, (i) the General Conveyance, Transfer, Assignment and Assumption, in substantially the form attached hereto as Exhibit "A", (ii) the Assignment and Assumption of Lease in the form attached as Exhibit "F", (iii) the Closing Agreement attached hereto as Exhibit "I", and (iv) any other documents, in the reasonable opinion of counsel to Seller, regarding the assumption of the Assumed Liabilities by Buyer. Buyer shall have executed and delivered to the applicable person, the Employment Agreements in the form attached hereto as Exhibit "B". The Seller, Buyer and the escrow agent under the Escrow Agreement shall have executed and delivered said Escrow Agreement and the Escrow Agreement shall be in full force and effect as of the Closing. The Seller, Buyer and each Landlord shall have executed and delivered the Landlord Assignment and Estoppel Certificate.



9.06 Other Legal Matters. All Exhibits, Schedules, certificates, documents and legal matters in connection with this Agreement and the transactions contemplated hereby shall be in the forms required by this Agreement.

## ARTICLE X

### INDEMNIFICATION

10.01 Indemnification by the Seller. Except as otherwise limited by this Article X and Article XI hereof, the Seller agrees to, only to the extent of the Seller Consideration, indemnify, defend and hold the Buyer and each of its officers, directors, stockholders, and controlling Persons and their respective representatives, successors and assigns (“Buyer Group”) harmless from and against and in respect of Damages actually suffered, incurred or realized by such party (collectively, “General Buyer Losses”), arising out of or resulting from or relating to any of the following, which exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00):

- (a) any misrepresentation or breach or failure of warranty made by the Seller in or pursuant to this Agreement;
- (b) any breach of any covenant or other agreement made or undertaken by the Seller in this Agreement;
- (c) any Retained Liability or Excluded Asset;
- (d) attributable to the Transferred Employees resulting from or based upon (i) any employment related liability with respect to the employment or termination of employment prior to the Closing Date; or
- (e) any fees, commissions or like payments by any Person having acted or claiming to have acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated by this Agreement.

#### 10.02 Intentionally Omitted.

10.03 Indemnification by the Buyer. Except as otherwise limited by this Article X and Article XI hereof, the Buyer agrees to indemnify, defend and hold the Seller and each of its officers, Managers, employees, agents and Members and their successors and assigns (“Seller Group”) harmless from and against and in respect of Damages actually suffered, incurred or realized by such party (collectively, “Seller Losses”), arising out of or resulting from any of the following which exceeds Two Thousand Five Hundred and No/100 Dollars (\$2,500.00):

- (a) any misrepresentation or breach of warranty made by the Buyer in this Agreement or any misrepresentation in or breach of warranty under any other agreement, to which Buyer is a party, certificate, Schedule, Exhibit or writing delivered by Buyer to the Seller pursuant to this Agreement;
- (b) any breach of any covenant or other agreement made or undertaken by the Buyer in this Agreement or in any other agreement to which Buyer is a party, certificate, Schedule, Exhibit or writing delivered by the Buyer to the Seller pursuant to this Agreement, including the Disclosure Schedule
- (c) any Assumed Liability or the Buyer’s operation of the Business or the Transferred Assets or the use of the Facilities as of the Closing Date; provided, however, that the Buyer shall in no event be liable for or be required to provide indemnity pursuant to this Section 10.03 for the Buyer’s failure to detect or remedy any Environmental Liabilities arising prior to the Closing Date; or
- (d) any fees, commissions or like payments by any Person having acted or claiming to have acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement.

#### 10.04 Procedure. All claims for indemnification under this Article X shall be asserted and resolved as follows:

- (a) An Indemnitee shall promptly give the Indemnitor notice of any matter which an Indemnitee has determined has given or could give rise to a right of indemnification under this Agreement, stating the amount of the Loss, if known, and method of computation thereof, all with reasonable particularity, and stating with particularity the nature of such matter. Failure to provide such notice shall not affect the right of the Indemnitee to indemnification except to the extent such failure shall have resulted in liability to the Indemnitor that could have been actually avoided had such notice been provided within such required time period.
- (b) The obligations and liabilities of an Indemnitor under this Article X with respect to Losses arising from claims of any third party that are subject to the indemnification provided for in this Article X (“Third Party Claims”) shall be governed by and contingent upon the following additional terms and conditions: if an Indemnitee shall receive notice of any Third Party Claim, the Indemnitee shall give the Indemnitor prompt notice of such Third Party Claim and the Indemnitor may, at its option, assume and control the defense of such Third Party Claim at the Indemnitor’s expense and through counsel of the Indemnitor’s choice acceptable to Indemnitee. In the event the Indemnitor assumes the defense against any such Third Party Claim as provided above, the Indemnitee shall have the right to participate at its own expense in the defense of such asserted liability, in which case Indemnitor and Indemnitee shall cooperate in such defense and will attempt to make available on a

reasonable basis all witnesses, pertinent records, materials and information in their possession or under their control relating thereto as is reasonably required by the either of them. In the event the Indemnitor does not elect to conduct the defense against any such Third Party Claim, the Indemnitor shall pay all reasonable costs and expenses (including attorneys' fees) of such defense, as incurred but not later than thirty (30) days from Indemnitor's receipt of a statement reflecting such costs and expenses, and shall cooperate with the Indemnitee (and be entitled to participate) in such defense and attempt to make available to it on a reasonable basis all such witnesses, records, materials and information in its possession or under its control relating thereto as is reasonably required by the Indemnitee. Except for the settlement of a Third Party Claim that involves the payment of money which Indemnitor shall pay and only for which the Indemnitee is totally indemnified by the Indemnitor, no Third Party Claim may be settled without the written consent of the Indemnitee.

10.05 Indemnity Escrow. On the Closing Date, Buyer shall deposit with the Escrow Agent the Escrow Amount in accordance with the terms of this Agreement. Any payment the Seller is obligated to make to Buyer pursuant to this Article X shall be paid in accordance with the terms of the Escrow Agreement and shall accordingly reduce the Escrow Amount and, second, to the extent the Escrow Amount is insufficient (and such claims are not subject to the Cap limitation under Section 10.08(a)) to pay any remaining sums due, then the Seller shall be required to pay all of such additional sums due and owing to the Buyer by wire transfer of immediately available funds within five (5) Business Days after the date of such notice. Fifteen (15) months after the date of the Escrow Agreement ("Release Date"), the Escrow Agent shall release the Escrow Amount (to the extent not utilized to pay Buyer for any indemnification claim) to the Seller, except that the Escrow Agent shall retain an amount (up to the total amount then held by the Escrow Agent) equal to the amount of claims for indemnification under this Article X asserted prior to the Release Date but not yet resolved ("Unresolved Claims"). The Escrow Amount retained for Unresolved Claims shall be released by the Escrow Agent (to the extent not utilized to pay Buyer Indemnified Parties for any such claims resolved in favor thereof) upon their resolution in accordance with this Article X and the terms of the Escrow Agreement.

10.06 Failure to Pay Indemnification. If and to the extent the Indemnitee shall make written demand upon the Indemnitor for indemnification pursuant to this Article X and the Indemnitor shall refuse or fail to pay in full within ten (10) Business Days of such written demand the amounts demanded pursuant hereto and in accordance herewith, then the Indemnitee shall be paid from the Escrow Amount, then Indemnitee may utilize any other legal or equitable remedy to collect from the Indemnitor the amount of Indemnitee Losses. Nothing contained herein is intended to limit or constrain the Indemnitee's rights against the Indemnitor for indemnity, the remedies herein being cumulative and in addition to all other rights and remedies of the Indemnitee.

10.07 Adjustment of Liability. The amount which an Indemnitee shall be entitled to receive from an Indemnitor with respect to any indemnifiable Loss under this Article X shall be net of any insurance recovery by the Indemnitee on account of such Loss from an unaffiliated party.

10.08 Limitations of Indemnity.

(a) Notwithstanding anything to the contrary, respectively, in Sections 10.01 and 10.03, (i) neither Seller nor Buyer shall make a payment under Section 10.01(a) or Section 10.03(a), as applicable, unless and until the aggregate amount to be paid by Seller, on the one hand, or the Buyer, on the other hand, in the absence of this clause, exceeds \$100,000.00 (the "Basket"), in which event all such amounts in excess of the Basket shall be paid and (ii) in no event shall the aggregate liability of Seller, on the one hand, or Buyer, on the other hand, under Section 10.01 or Section 10.03, as applicable, exceed seven and one-half percent (7.5%) of the Seller Purchase Price (the "Cap"); PROVIDED, HOWEVER, that (x) the Cap shall not apply to any liability arising out of, resulting from or relating to the intentional acts of fraud (excluding constructive knowledge, gross negligence or recklessness) of Seller and (y) neither the Basket nor the Cap limitation shall apply in respect of indemnification under Sections 3.01, 3.02(a), 3.07, 3.10, 3.14 and 3.18, the first sentence of Sections 3.04(b), 3.04(d) and 3.04(e), and the second sentence of Sections 3.04(b) and 4.01.

(b) Except for claims of intentional acts of fraud by the Seller and any claims related to the Retained Liabilities, the remedies provided in this Article X shall constitute the sole and exclusive source of satisfaction of Buyer with respect to any Damages arising on and after the Closing Date, and Buyer shall not have any other remedies against Seller. Notwithstanding the foregoing, this Section 10.08 shall not (i) operate to interfere with or impede the operation of Sections 1.03 or 13.03 for the resolution of certain disputes and payment of funds in respect thereof or (ii) limit the rights of the parties to seek non-monetary equitable remedies, including but not limited to specific performance or injunctive relief.

10.09 Tax Treatment of Indemnity Payment. Seller and Buyer agree to treat any indemnity payment made pursuant to this Article X as an adjustment to the Seller Purchase Price for all income tax purposes.

## ARTICLE XI

### NATURE OF STATEMENTS AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations and warranties of the parties contained in this Agreement and any document, letter or schedule delivered pursuant to this Agreement shall survive the Closing Date and shall remain in full force and effect for a period of twelve (12) months following the Closing Date (except that (i) the representations and warranties set forth in Sections 3.01, 3.02(a), 3.18, the first sentence of each of 3.04(b), 3.04(d) and 3.04(e), the second sentence of 3.04(b) and 4.01 shall survive the Closing Date without limitation and (ii) the representations and warranties contained in Section 3.07, 3.10 and 3.14 hereof shall survive the Closing Date and shall not terminate until ninety (90) days after the expiration of all applicable statutes of limitations therefor). The respective period during which the representations and warranties shall survive being referred to herein with respect to such representations and warranties as the "Survival Period", and the Survival Period shall further be effective with respect to any respective representation or warranty (and a claim for indemnification under Article X hereof may be made thereon)

if a written notice asserting the claim shall have been duly given in accordance with Article X hereof within the Survival Period with respect to such matter. Any claim for indemnification made during the Survival Period shall be a valid claim and the representations and warranties relating thereto shall remain in effect for purposes of such indemnification notwithstanding such claim may not be resolved within the Survival Period. All representations and warranties made by the parties shall not be affected by any investigation heretofore or hereafter made by and on behalf of any of them and shall not be deemed merged into any instruments or agreements delivered in connection with the Closing or otherwise in connection with the transactions contemplated hereby.

## ARTICLE XII

### EXPENSES

Except as otherwise set forth herein, and whether or not the transactions contemplated by this Agreement shall be consummated, each party agrees to pay, without right of reimbursement from any other party, the costs incurred by such party incident to the preparation and execution of this Agreement and performance of its obligations hereunder, including without limitation the fees and disbursements of legal counsel, accountants and consultants, including, but not limited to Versailles, employed by such party in connection with the transactions contemplated by this Agreement (“Transactional Expenses”). Seller represents and warrants that no Transactional Expenses are accrued on any Financial Statements nor will they be, included in the calculation of Net Working Capital or Final Working Capital, rather all of the Seller’s Transactional Expenses shall only be paid from the Seller Purchase Price.

## ARTICLE XIII

### TERMINATION

13.01 Best Efforts to Satisfy Conditions. Subject to the provisions of this Agreement, the Buyer and the Seller agree to use their good faith efforts to bring about the satisfaction of their respective conditions specified in Articles VIII and IX hereof.

13.02 Termination. The obligation to close the transactions contemplated by this Agreement may only be terminated by mutual agreement of the Buyer and the Seller.

## ARTICLE XIV

### DEFINITIONS OF CERTAIN TERMS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings assigned to them herein, unless the context otherwise indicates, both for purposes of this Agreement and all Exhibits and Schedules hereto:

14.01 *“Accounts Receivable”*

shall have the meaning given such term in Section 1.01(a)(iii) hereof.

14.02 *“Agreement”*

shall mean this Asset Purchase Agreement between the Seller and the Buyer including all Exhibits attached to this Agreement and all Schedules referred to in this Agreement which shall be included in that one certain Disclosure Letter delivered to Buyer and all other documents provided pursuant to this Agreement.

14.03 *Intentionally Omitted*.

14.04 *“Assumed Liabilities”*

shall have the meaning given such term in Section 1.04 hereof.

14.05 *“Business”*

shall mean the existing businesses and operations of the Seller as of the day before the Closing Date. For the avoidance of doubt, the existing business of the Seller does not include the original manufacturing of any product whatsoever.

14.06 *“Business Day”*

shall mean any day other than a Saturday, Sunday or any other day on which nationally banking institutions in the States of Texas or of New York are authorized by law to close.

14.07 *“Buyer”*

shall mean DXP Enterprises, Inc., a Texas corporation.

14.08 *“Closing”*

shall mean the transfer by the Seller to the Buyer of the Transferred Assets, the assumption by the Buyer of the Assumed Liabilities and the transfer by the Buyer to the Seller of the other considerations set forth herein, which shall all be deemed to have occurred on the Closing Date.

*14.09 "Closing Date"*

shall mean the time and date of the Closing as specified in Article II hereof.

*14.10 "Code"*

shall mean the Internal Revenue Code of 1986, as amended from time to time.

*14.11 "Contracts and Other Agreements"*

shall have the meaning given such term in Section 1.01(a)(v) hereof and shall mean all purchase orders, leases of equipment, contracts, agreements, understandings, indentures, notes, bonds, loans, instruments, leases (including of real property), mortgages, franchises, licenses, commitments or other arrangements, understandings, undertakings, obligations, or other engagements whether express or implied, oral or written, to which the Seller is a party or bound.

*14.12 "Damages"*

shall mean any and all liabilities, losses, damages, demands, assessments, claims, costs, obligations, deficiencies, judgments and expenses (excluding incidental, punitive and consequential damages), including interest, awards, judgments, penalties, settlements, fines, claims, suits, actions, causes of action, assessments, awards, costs of remediation, diminutions in value, reasonable costs and expenses incurred in connection with investigating and defending any claims or causes of action (including, without limitation, reasonable attorneys' fees and expenses and all fees and expenses of consultants and other professionals).

*14.13 "Disclosure Schedule"*

shall mean the disclosure schedule as dated and delivered to the Buyer and updated as set out in Section 15.15.

*14.14 "Documents and Other Papers"*

shall have the meaning given such term in Section 1.01(a)(viii) hereof and shall mean and include any document, paper, book, report, record, tape, photograph, budget, forecast, ledger, journal, customer list, supplier list, regulatory filings, operating data, plans, technical documentation, marketing documentation, agreement, instrument, certificate, writing, notice, consent, affidavit, letter, telegram, telex, statement, file, computer disk or file or program, microfilm, microfiche or other document in electronic format, schedule, exhibit or any other paper or record whatsoever.

*14.15 "Employment Agreements"*

shall have the meaning given such term in Section 8.06 hereof.

*14.16 "Environmental Laws"*

means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Asset Conservation, Lender Liability, and Deposit Insurance Act of 1996, 42 U.S.C. §9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §9601 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq.; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §11001 et seq.; the Clean Air Act of 1966, as amended 42 U.S.C. §7401 et seq.; the National Environmental Policy Act of 1975, 42 U.S.C. §4321 et seq.; the Rivers and Harbours Act of 1899, 33 U.S.C. §401 et seq.; the Endangered Species Act of 1973, as amended 16 U.S.C. §1531 et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §651 et seq.; and the Safe Drinking Water Act of 1974, as amended 42 U.S.C. §300(f) et seq.; and all rules, regulations and guidance promulgated or published thereunder, and any Laws relating to public health, safety or the environment, including, without limitation, those relating (i) to releases, discharges, emissions or disposals to air, water, land or ground water, (ii) to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, (iii) to the treatment, storage, disposal or management of Hazardous Substances (including, without limitation petroleum, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the real property of the Company, (iv) to the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances, (v) to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulations, order, injunction, judgment, declaration, notice or demand issued thereunder.

*14.17 "Environmental Liabilities"*

shall mean any and all liabilities, responsibilities, claims, suits, losses, costs (including remedial, removal, response, abatement, clean-up, investigative, and/or monitoring costs and any other related costs and expenses), other causes of action recognized now or at any later time, damages, settlements, expenses, charges, assessments, liens, penalties, fines, pre-judgment and post-judgment interest, attorney's fees and other legal fees, costs of experts, consultants, investigations and feasibility studies, sanctions (a) incurred as a result of any agreement, claim, demand,

order, notice, or responsibility, directive (including directives embodied in Environmental Laws), injunction, judgment, or similar documents (including settlements); or (b) pursuant to any claim by a Governmental Entity or other Person for personal injury, property damage, damage to natural resources, remediation, or payment or reimbursement of response costs incurred or expended by such Governmental Entity or Person pursuant to any Environmental Law, common law or statute.

14.18 *“Environmental Permit”*

shall mean any permit, license, approval, registration, identification number or other authorization with respect to the Transferred Assets or the operations or businesses of the Seller under any applicable law, regulation or other requirement of the United States or any other country or of any state, municipality or other subdivision thereof relating to the control of any pollutant or protection of health or the environment, including laws, regulations or other requirements relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic materials or wastes into ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants or hazardous or toxic materials or wastes.

14.19 *“Equipment”*

shall mean all machinery, transportation equipment, tools, equipment, furnishings, furniture, office equipment and fixtures owned, leased or subject to a contract of purchase and sale, or lease commitment by the Seller.

14.20 *“ERISA”*

shall mean the Employee Retirement Income Security Act of 1974, and the related regulations, as amended from time to time.

14.21 *“Excluded Assets”*

shall have the meaning given such term in Section 1.02 hereof.

14.22 *“Facilities”*

shall mean the five (5) real properties and interests in real properties that are leased by Seller and which leases are attached to Schedule 14.22 to the Disclosure Schedule. Facilities shall include all fixtures, improvements and other appurtenances erected or located on or affixed to all said real property and all interests in said real property.

14.23 *“Final Net Working Capital”*

means the Net Working Capital (i) as shown in the Closing Statement, if no Dispute Notice is duly delivered; or (ii) if such a Dispute Notice is delivered, (A) as agreed by Buyer and Seller or (B) in the absence of such agreement, as shown in the Firm’s calculation. The Final Net Working Capital shall be based on the Net Working Capital as of the close of business on the day before the Closing Date.

14.24 *“Financial Statements”*

shall have the meaning given such term in Section 3.06(a) hereof.

14.25 *“General Buyer Losses”*

shall have the meaning given such term in Section 10.01 hereof.

14.26 *“Governmental Entity”*

shall mean any arbitrator, court, administrative or regulatory agency, commission, department, board or bureau or body or other government or authority or instrumentality or any entity or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government whether foreign, federal, state, county, city or local.

14.27 *“Hazardous Materials”*

shall mean any chemical, material, substance or waste that is regulated, classified or otherwise characterized by any Governmental Entity as hazardous under or pursuant to any Environmental Law.

14.28 *“Indemnitee”*

shall mean the Person or Persons indemnified, or entitled, or claiming to be entitled to be indemnified, pursuant to the provisions of Sections 10.01 or 10.03 hereof, as the case may be.

14.29 *“Indemnitor”*

shall mean the Person or Persons having the obligation to indemnify pursuant to the provisions of Sections 10.01 or 10.03 hereof, as the case may be.

14.30 Intentionally omitted.

14.31 “Inventories”

shall have the meaning given such term in Section 1.01(a)(ii) hereof and shall mean all inventories of the Business including wholesale distribution, integrated supplies solutions and general industrial supplies including, but not limited to, abrasives, cutting tools, components, fixturing, machine tool accessories, vending machines, vending machine supplies and other inventories of Seller relating to the Business, wherever situated.

14.32 “Jasco Business”

shall mean the manufacturing business of Jasco Tools, Inc., Little Rock Tools, Inc., and Jasco Heat Treating, Inc., which business includes the manufacturing and direct sales of its manufactured products as it exists on the day before the Closing Date. For the avoidance of doubt, “Jasco Business” does not include industrial distribution and integrated supply or the Business.

14.33 “Knowledge of Seller”

means the knowledge, after due inquiry, of the officers and Managers of Seller.

14.34 “Lien”

shall mean any lien, pledge, claim, charge, mortgage, deed of trust, lease, right of first refusal, security interest or other encumbrance, option, defect or other restriction, limitation or rights of any third Person of any nature whatsoever.

14.35 “Losses”

shall mean Seller Losses or General Buyer Losses, as the case may be.

14.36 “Managers”

shall mean John M. Summers.

14.37 “Members”

shall mean the parties listed in Exhibit “H”.

14.38 “Net Working Capital”

is the current assets of the Business (excluding cash) reduced by the current liabilities of the Business both determined in accordance with AICPA principles and generally accepted accounting principles as provided for in the Financial Statements. Exhibit “G” sets forth the parties’ agreement regarding what amounts will be included in the calculation of the Final Net Working Capital of the Seller. Transactional Expenses shall not be included in the calculation of Net Working Capital.

14.39 “Permits”

shall have the meaning given such term in Section 1.01(a)(ix) hereof.

14.40 “Permitted Liens”

shall mean (a) Liens created by this Agreement, (b) Liens for current taxes and assessments not yet due, (c) title of a lessor under an operating lease, (d) inchoate mechanic, materialmen, workmen, repairmen, warehousemen, customer, employee and carriers Liens arising in the ordinary course of business that are not resulting from a breach, default or violation of any contract, agreement or law, (e) zoning, entitlement or other land use and environmental regulations by any Governmental Entity, provided that such regulations have not been violated prior to the Closing Date.

14.41 “Person”

shall mean a corporation, an association, a partnership, an organization, a business, an individual or a Governmental Entity.

14.42 “Pre-Closing Obligations”

shall mean all obligations of the Seller (including indemnification and other contingent obligations) relating to (i) acts, events or omissions by any Person or circumstances existing prior to the Closing Date, (ii) goods or services provided to or for the benefit of the Seller prior to the Closing Date, (iii) goods or services provided by or on behalf of the Seller or any of its licensees prior to the Closing Date, (iv) any pending or threatened litigation or claims made or threatened prior to the Closing Date, (v) any of the matters listed on Schedule 1.05 hereto, (vi) the conduct of the Business, the Seller or operation of the Transferred Assets or any benefit realized by the Seller prior to the Closing Date, (vii) contracts, agreements and other commitments that were required to be scheduled in Schedule 3.05(a) of the Disclosure Statement but were not

scheduled and (viii) the employees of the Seller under any contracts, agreements, arrangements or understandings with such employees entered into or existing at or prior to the Closing Date and all other obligations of the Seller with respect to its employees prior to the Closing Date.

*14.43 “Proprietary Information”*

shall mean collectively (a) Proprietary Rights and (b) any and all other information proprietary to the Seller, owned, possessed or used by the Seller, whether or not such information is embodied in writing or other physical form, and which is not generally known to the public, that (i) relates to financial information regarding the Seller or the Business, including, without limitation, (x) accounting and inventory systems (y) business plans and (z) sales, financing, pricing and marketing procedures or methods of the Seller or (ii) relates to specific business matters concerning the Seller, including, without limitation, the identity of or other information regarding sales personnel, suppliers or customers of the Seller.

*14.44 “Proprietary Rights”*

means all patents, inventions, shop rights, internet domain names, computer programs, databases, compilations, descriptions, flow-charts, accounting and inventory systems, know how, trade secrets, designs, plans, manuals, computer software (including but not limited to CribMaster, Profit 21, Radio Frequency Identification software including Tool Tracking Software, Accu-Cab), specifications, confidentiality agreements, confidential information and other proprietary technology and similar information; all registered and unregistered trademarks, service marks, identifying symbols, logos, emblems, corporate names, trade names and all other trademark rights; all registered and unregistered copyrights; and all registrations for, and applications for registration of, any of the foregoing, that are used in the conduct of the Business.

*14.45 “Retained Liabilities”*

shall have the meaning given such term in Section 1.05 hereof.

*14.46 “Seller”*

shall collectively mean Kenneth Crosby, LLC, Kenneth Crosby New York, LLC, Kenneth Crosby Southern Tier, LLC and Kenneth Crosby Western New York, LLC, each a New York limited liability company.

*14.47 “Seller Purchase Price”*

shall have the meaning given such term in Section 1.03(a) hereof.

*14.48 “Subsidiary”*

shall mean, as to a Person or other entity or organization in which such Person owns (directly or indirectly) any equity or other similar corporate interest.

*14.49 “Tax Consideration”*

shall have the meaning given such term in Section 1.08(a) hereof.

*14.50 “Tax Returns”*

shall mean all returns, declarations, reports, statements and other documents of, relating to, or required to be filed in respect of, any and all Taxes.

*14.51 “Taxes”*

shall mean all federal, state, local, foreign and other taxes, charges, fees, duties, levies, imposts, customs or other assessments, including, without limitation, all net income, gross income, capital, transfer, inventory, capital stock, license, social security, unemployment, estimated taxes, gross receipts, sales, use, ad valorem, transfer, franchise, profits, profit share, license, lease, service, service use, value added, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, premium, property, windfall profits, or other taxes, fees, assessments, customs, duties, levies, imposts, or charges of any kind whatsoever, together with any interests, penalties, additions to tax, fines or other additional amounts imposed thereon or related thereto.

*14.52 “Third Party Claims”*

shall have the meaning given such term in Section 10.04(b) hereof.

*14.53 “Third Party Leases”*

shall have the meaning given such term in Section 7.08 hereof.

*14.54 “Trade Payables”*

shall mean those obligations of the Seller relating to the provision of goods and services to the Seller for the conduct of the Business in the ordinary course of business of the Seller that relate to the Transferred Assets and that are classified as Trade Payables in accordance with GAAP and are shown on Seller's financial statements.

14.55 "Transferred Assets"

shall have the meaning given such term in Section 1.01(a) hereof.

14.56 "Transferred Employees"

shall have the meaning given such term in Section 6.01 hereof.

14.57 "Vehicles"

shall have the meaning given such term in Section 1.01(a)(i) hereof.

ARTICLE XV

MISCELLANEOUS

15.01 Notices. All notices, requests, consents, directions and other instruments and communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by courier, by overnight delivery service with proof of delivery or by prepaid registered or certified United States first-class mail, return receipt requested, addressed to the respective party at the address set forth below, or if sent by facsimile or other similar form of communication (with receipt confirmed) to the respective party at the facsimile number set forth below:

If to the Seller, to:

Eugene W. Baldino, CEO  
Jasco Family of Companies  
1390 Mt. Read Blvd.  
Rochester, New York 14606  
(V) (585) 254-7000  
(F) (585) 254-2655

Copies to:

Kenneth A. Marvald  
Vice President & General Counsel  
Jasco Family of Companies  
1001 Lexington  
Rochester, New York 14606  
(V) (585) 546-6844  
(F) (585) 546-8107

If to the Buyer, to:

DXP Enterprises, Inc.  
7272 Pinemont  
Houston, Texas 77040  
Attn: David R. Little, CEO  
(V) (713) 996-4755  
(F) (713) 996-6570

Copies to:

Gary A. Messersmith  
Looper, Reed & McGraw, P.C.  
1300 Post Oak Blvd., Suite 2000  
Houston, Texas 77056  
(V) (713) 986-7216  
(F) (713) 986-7100

or to such other address or facsimile number and to the attention of such other Person(s) as either party may designate by written notice. Any notice mailed shall be deemed to have been given and received on the third Business Day following the day of mailing.

15.02 Intentionally omitted.

15.03 Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No party to this Agreement may sell, transfer, assign, pledge or hypothecate its rights, interests or obligations under this Agreement without the prior written consent of the other parties, except that the Buyer may assign its rights to any affiliate of the Buyer. No assignment of this Agreement or any of the rights, interests or obligations hereof by the Buyer shall relieve the Buyer of its obligations under this Agreement and, upon any such assignment occurring prior to the Closing, the representations, warranties, covenants and agreements contained in this Agreement shall be deemed to have been made by the Buyer's assignee as well as by the Buyer.



15.04 Successors. This Agreement shall inure to the benefit of, be binding upon and be enforceable by the parties hereto and their respective successors and assigns.

15.05 Entire Agreement. This Agreement and the Exhibits and Schedules hereto and the Disclosure Schedule constitute the entire agreement and understanding between the parties relating to the subject matter hereof and thereof and supersedes all prior representations, endorsements, premises, agreements, memoranda communications, negotiations, discussions, understandings and arrangements, whether oral, written or inferred, between the parties relating to the subject matter hereof. This Agreement may not be modified, amended, rescinded, canceled, altered or supplemented, in whole or in part, except upon the execution and delivery of a written instrument executed by a duly authorized representative of each of the parties hereto. No action taken pursuant to this Agreement, including without limitation, any investigation by or behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant, or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver or any other subsequent breach. The Schedules referred to in this Agreement are contained in that one certain Disclosure Letter from Seller to Purchaser. The Disclosure Letter and the Schedules attached thereto are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

15.06 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without giving effect to choice of law principles. The parties submit to the non-exclusive jurisdiction of the courts of the State of Texas or New York. Venue of any dispute arising out of this Agreement shall be in Houston, Harris County, Texas or Rochester, Monroe County, New York.

15.07 Waiver. The waiver of any breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

15.08 Severability. If any term or other provision of this Agreement is invalid, illegal, incapable of being enforced by any law or public policy, prohibited or unenforceable all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

15.09 No Third Party Beneficiaries. Any agreement contained, expressed or implied in this Agreement shall be only for the benefit of the parties hereto and their respective legal representatives, successors and assigns, and such agreements shall not inure to the benefit of the obligees of any indebtedness of any party hereto, it being the intention of the parties hereto that no Person shall be deemed a third party beneficiary of this Agreement, except to the extent a third party is expressly given rights herein.

15.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together shall constitute one and the same Agreement. Any signature hereto delivered by a party by facsimile or electronic transmission shall be deemed to be an original signature hereto.

15.11 Headings. Each statement set forth in the Disclosure Schedule with respect to a particular section herein shall be deemed made solely with respect to such section and not with respect to any other section hereof unless specifically set forth in the Disclosure Schedule as also being made with respect to such other section. The headings of the Articles and sections of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof or affect in any way the meaning or interpretation of this Agreement.

15.12 Negotiated Transaction. The provisions of this Agreement were negotiated by the parties hereto, and this Agreement shall be deemed to have been drafted by all of the parties hereto.

15.13 Negotiation with Others. The Seller agrees that from the date hereof until the Closing Date or the termination of this Agreement pursuant to Article XIII, it will not, directly or indirectly, negotiate with any Person not a party hereto or not affiliated with a party hereto with respect to a merger, consolidation, asset purchase or any similar transaction with any such Person regarding the Business or the Transferred Assets.

15.14 Prevailing Party. In the event there is any legal action commenced to enforce or interpret this Agreement, the prevailing party shall be entitled to collect all reasonable costs incurred from the other party, including but not limited to court costs, expert witness fees and attorneys' fees.

15.15 Disclosure Schedules. Seller certifies the accuracy of the Disclosure Schedules and the material disclosures required on the date shown thereon or the date of this Agreement if no other date is shown on the respective Disclosure Schedule. Seller will immediately update the respective Disclosure Schedule in the event of a material change in the information provided in such Disclosure Schedule. The headings contained in the Schedules are for convenience of reference only and shall not be deemed to modify the interpretation of the information contained in the Schedules or this Agreement.



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

SELLER:

KENNETH CROSBY, LLC

By: /s/John M. Summers

Name: John M. Summers

Title: Manager

KENNETH CROSBY NEW YORK, LLC

By: /s/John M. Summers

Name: John M. Summers

Title: Manager

KENNETH CROSBY SOUTHERN TIER, LLC

By: /s/John M. Summers

Name: John M. Summers

Title: Manager

KENNETH CROSBY WESTERN NEW YORK, LLC

By: /s/John M. Summers

Name: John M. Summers

Title: Manager

BUYER

DXP ENTERPRISES, INC.

By: /s/David R. Little

Name: David R. Little

Title: CEO

## EXHIBIT A

### Form of General Conveyance, Transfer, Assignment & Assumption

This General Conveyance, Transfer, Assignment and Assumption (“Agreement”) effective October \_\_\_\_, 2011 is between KENNETH CROSBY, LLC, KENNETH CROSBY NEW YORK, LLC, KENNETH CROSBY SOUTHERN TIER, LLC, and KENNETH CROSBY WESTERN NEW YORK, LLC, each a New York limited liability company (“Assignor”) and DXP ENTERPRISES, INC., a Texas corporation (“Assignee”).

#### RECITALS

WHEREAS, Assignor and Assignee have entered into an Asset Purchase Agreement dated as of October \_\_\_\_, 2011 (the “Purchase Agreement”) providing, among other things, for the sale by Assignor and the purchase by Assignee of the Transferred Assets (as defined therein); and

WHEREAS, in order to effectuate the sale and purchase of the Transferred Assets, Assignor is executing and delivering this Agreement to Assignee.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby acts and agrees as follows:

1. Conveyance of Transferred Assets. Subject to Paragraph 2 hereof, effective as of the [Effective] Closing Date Assignor hereby SELLS, CONVEYS, TRANSFERS, ASSIGNS, GRANTS, BARGAINS and DELIVERS unto Assignee and its successors and assigns, forever, all of the following assets, rights and properties (collectively, the “Transferred Assets”):

Assignor’s entire right, title and interest in, to and under the Business, as a going concern, and all assets (except the Excluded Assets) owned or leased and used by the Assignor in connection with or arising out of the Business of every type and description, real or personal, tangible and intangible, wherever located and whether or not reflected on the books and records of the Assignor, including, but not limited to:

- (i) all tangible personal property, including but not limited to the Equipment, and vehicles;
- (ii) all Inventories;
- (iii) all Accounts Receivable;
- (iv) to the extent assignable, the Proprietary Information, including but not limited to the name “Kenneth Crosby, Kenneth Crosby New York, Kenneth Crosby Southern Tier and Kenneth Crosby Western New York” or any derivative thereof, and the names of the customers and suppliers of the Business;
- (v) to the extent assignable, all Contracts and Other Agreements;
- (vi) intentionally omitted;
- (vii) to the extent assignable, all prepaid expenses, deposits and similar assets of Seller, but specifically excluding pre-paid insurance;
- (viii) the Documents and Other Papers;
- (ix) to the extent assignable, all Permits;
- (x) all supplies and computer equipment;
- (xi) all rights to third-party property and casualty insurance proceeds to the extent receivable in respect of the property or assets that would otherwise be Transferred Assets; and
- (xii) any other intangible assets of Assignor associated with Transferred Assets and the Business.

2. Excluded Assets. It is specifically understood and agreed that this Agreement and the term “Transferred Assets” as used herein do not cover or include the Excluded Assets.

3. Assumption. Assignee hereby assumes and agrees to perform all of the terms, conditions, covenants and obligations of Assignor of the Assumed Liabilities (as defined in the Purchase Agreement) only in accordance with the provisions of the Purchase Agreement and Assignee does not assume or agree to pay, perform, discharge or be responsible for any other obligations or liabilities of Assignor.

4. Defined Terms. All capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase

Agreement.

5. Counterparts . This Agreement may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one assignment.

6. Further Assurances . From time to time, as and when reasonably requested by Assignee, Assignor shall execute and deliver, or cause to be executed and delivered, such documents and instruments and shall take, or cause to be taken, such further or other actions as may be reasonably necessary to carry out the purposes of this Agreement.

7. Controlling Agreement . It is contemplated that Assignor may, at any time or from time to time, execute, acknowledge and deliver one or more separate instruments of assignment and conveyance relating to certain of the Transferred Assets. Neither this Agreement nor any such separate instrument of assignment or conveyance shall limit or enlarge the scope and effect of the Purchase Agreement. In the event that any conflict or ambiguity exists as between the Purchase Agreement and this Agreement or any such separate instrument of assignment, the terms and provisions of the Purchase Agreement shall govern and be controlling.

8. Governing Law . The validity of this Agreement shall be governed by and construed in accordance with the laws of the State of New York, excluding any conflicts-of-law rule or principle which might refer same to another jurisdiction.

9. Successors and Assigns . This Agreement shall bind Assignor and its successors and assigns and inure to the benefit of Assignee and its successors and assigns.

10. Descriptive Headings . The descriptive headings of the several Paragraphs, subparagraphs and clauses of this Agreement were inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

ASSIGNOR:  
KENNETH CROSBY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNETH CROSBY NEW YORK, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNETH CROSBY SOUTHERN TIER, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNETH CROSBY WESTERN NEW YORK, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE:  
DXP ENTERPRISES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B

### Form of Employment Agreement

This Employment Agreement (the "Agreement") by and between **DXP ENTRPRISES, INC.**, a Texas corporation (the "Company"), and \_\_\_\_\_ (the "Executive") is entered into this \_\_\_\_ day of October, 2011 ("the Effective Date"):

#### **RECITALS**

- A. The Company desires to employ Executive in the capacity set forth on Exhibit "A", pursuant to the provisions of this Agreement; and
- B. The Executive desires employment as an employee of the Company pursuant to the provisions of this Agreement.

#### ARTICLE I **TERMS OF EMPLOYMENT**

1.1 Employment. The Company hereby employs the Executive for and during the term hereof in the position set forth on Exhibit "A". The Executive hereby accepts employment under the terms and conditions set forth in this Agreement.

1.2 Duties of Executive. The Executive agrees to devote the Executive's best efforts, abilities, knowledge, experience and full business time to the faithful performance of the duties, responsibilities, and authorities which may be assigned to the Executive. Executive may not engage, directly or indirectly, in any other business, investment, or activity that interferes with Executive's performance of Executive's duties hereunder, or is contrary to the interests of the Company. Executive shall at all times comply with and be subject to such reasonable policies and procedures as the Company may establish from time to time, which will be customary within Company's industry. Executive acknowledges and agrees that Executive owes a fiduciary duty of loyalty, fidelity and allegiance to act at all times in the best interests of the Company and to do no act which would injure Company's business, its interests, or its reputation.

1.3 Term. This Agreement is entered into in connection with that one certain Asset Purchase Agreement, by and among, Employer, Kenneth Crosby, LLC, Kenneth Crosby New York, LLC, Kenneth Crosby Southern Tier, LLC, and Kenneth Crosby Western New York, LLC ("Seller") and their respective Members and shall become effective only upon the Effective Date and shall continue in force and effect for a period of two (2) years unless sooner terminated as provided in Section 2.1 hereof. Unless this Agreement is terminated before the end of its initial term, the term hereof shall be automatically extended for successive monthly terms, unless terminated prior to the expiration of any one monthly term. Except as set out herein, this Agreement may only be renewed or extended by written agreement executed by the Company and the Executive pursuant to mutually acceptable terms and conditions.

1.4 Compensation. The Company shall pay the Executive, as "Compensation" for services rendered by the Executive under this Agreement the following Guaranteed Base plus bonus/commission, if any.

- (a) Guaranteed Base: An annual base salary amount as set forth on Exhibit "A", prorated for any partial period of employment ("Guaranteed Base"). Such Guaranteed Base shall be paid in installments in accordance with the Company's regular payroll practices, but not less frequently than bi-weekly.
- (b) Bonus/Commission: A bonus/commission, if any, only as set forth in Exhibit "A".

1.5 Employment Benefits. In addition to the Guaranteed Base payable to the Executive hereunder, the Executive shall be entitled to the following benefits:

- (a) Employment Benefits. As an employee of the Company, the Executive shall participate in and receive all benefit plans and programs made available by the Company, as may be in effect from time to time, upon satisfaction by the Executive of the eligibility requirements therefore.
- (b) Working Facilities. During the term of this Agreement, the Company shall provide, at its expense, furniture, equipment, supplies and personnel as shall be adequate for the Executive's use in performing Executive's duties and responsibilities under this Agreement.
- (c) Business Expenses. The Company shall pay or reimburse for all business related expenses (as defined by the Internal Revenue Code) incurred in connection with the performance of Executive duties. The approval and payment of such expenses shall be in accordance with the Company's regular practices.
- (d) Vacation. Executive shall be entitled to the vacation in accordance with the Company's employee manual.
- (e) Limitations. Company shall not by reason of Articles 1.4 and 1.5 be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any incentive compensation or employee benefit program or plan, so long as such actions are similarly applicable to covered executives similarly situated. Executive's employment is also subject to the terms and conditions of the Company's employee manuals; provided however to the extent the Company's employee manuals and this Agreement conflict, this

Agreement shall control.

## ARTICLE II. TERMINATION

2.1 Termination. Notwithstanding anything herein to the contrary, this Agreement and the Executive's employment hereunder may be terminated without any breach of this Agreement at any time during the term hereof by reason of and in accordance with the following provisions:

(a) Death. If the Executive dies during the term of this Agreement and while in the employ of the Company, this Agreement shall automatically terminate as of the date of the Executive's death, and the Company shall have no further liability hereunder to the Executive or Executive's estate, except to the extent set forth in Section 2.2(a) hereof.

(b) Disability. If, during the term of this Agreement, the Executive shall be incapable of performing the Executive's duties hereunder, for a period of not less than ninety (90) consecutive days or an aggregate of one hundred twenty (120) days during any period of twelve (12) consecutive calendar months, by reason of becoming Disabled as hereinafter defined, the Company may terminate this Agreement immediately upon written notice to the Executive without any further liability hereunder to the Executive, except as set forth in Section 2.2(b) hereof. For purposes of this Agreement, the Executive shall be deemed "Disabled" when the Company, upon the written report of a qualified physician designated by the Company, shall have reasonably determined that the Executive has become mentally, physically and/or emotionally incapable of performing Executive's duties and services under this Agreement.

(c) Termination by the Company for Cause. Prior to the expiration of the term of this Agreement, the Company may discharge the Executive for cause and terminate this Agreement immediately upon written notice to the Executive without any further liability hereunder to the Executive, except to the extent set forth in Section 2.2(c) hereof. For purposes of this Agreement, a "discharge for cause" shall mean termination of the Executive upon written notice to the Executive limited, however, to one or more of the following reasons:

(1) Conviction of the Executive by a court of competent jurisdiction of a felony or a crime involving moral turpitude;

(2) The Executive's continued failure or refusal to comply with any of the Company's policies, standards, and regulations, which from time to time may be established after not less than thirty (30) days prior written notice and the failure of Executive to cure or cease such failure, refusal or breach as determined, in good faith, by the Company;

(3) The Executive's engaging in conduct amounting to fraud, dishonesty, gross negligence, willful misconduct or conduct that is unprofessional, unethical, or detrimental to the reputation, character or standing of the Company in a material way; or

(4) The Executive's continued failure to faithfully and diligently perform the duties required hereunder or to comply with the provisions of this Agreement after not less than thirty (30) days prior written notice and the failure of Executive to cure or cease such failure, refusal or breach as determined, in good faith, by the Company.

(d) Termination by the Company with Notice. The Company may terminate this Agreement at any time, for any reason, other than as set forth in Subparagraphs (a), (b) or (c) of this Section 2.1, with or without cause, in the Company's sole discretion, upon fifteen (15) days prior written notice to the Executive without any further liability hereunder to the Executive, except to the extent set forth in Section 2.2(d) hereof.

(e) Termination by the Executive for Good Reason. The Executive may terminate this Agreement at any time for Good Reason (as hereinafter defined) in which event the Company shall have no further liability hereunder to the Executive, except to the extent set forth in Section 2.2(e) hereof. For purposes of this Agreement, the term "Good Reason" shall mean, without the Executive's express written consent, the occurrence of any of the following circumstances:

(1) The Company's failure to pay the Executive the Compensation pursuant to the terms of this Agreement that has not been cured within thirty (30) days after notice of such noncompliance has been given by the Executive to the Company; or

(2) Any failure by the Company to comply with any material provision of this Agreement, including without limitation Section 2.3 of this Agreement, that has not been reasonably cured within thirty (30) days after notice of such noncompliance has been given by the Executive to the Company.

(f) Termination by the Executive with Notice. The Executive may terminate this Agreement for any reason, in the Executive's sole discretion other than Good Reason, by giving the Company fifteen (15) days prior written notice, in which event the Company shall have no further liability hereunder to the Executive, except to the extent set forth in Section 2.2(f) hereof.

2.2 Compensation upon Termination.

(a) Death. In the event the Executive's employment hereunder is terminated pursuant to the provisions of Section 2.1(a)

hereof due to the death of the Executive, the Company shall have no further obligation to the Executive or Executive's estate, except to pay to the Executive's spouse, or if none, to the estate of the Executive any accrued, but unpaid, Guaranteed Base and any vacation or sick leave benefits, which have accrued as of the date of death, but were then unpaid or unused and unpaid business expenses and a full monthly Guaranteed Base. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the death of the Executive.

(b) Disability. In the event the Executive's employment hereunder is terminated pursuant to the provisions of Section 2.1(b) hereof due to Disability of the Executive, the Company shall be relieved of all of its obligations under this Agreement, except to pay the Executive any accrued, but unpaid Guaranteed Base, and vacation or sick leave benefits, which have accrued as of the date on which such Disability is determined, but then remains unpaid and unpaid business expenses. The provisions of the preceding sentence shall not affect the Executive's rights to receive payments under the Company's disability insurance plan, if any. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(c) Termination by the Company for Cause. In the event the Executive's employment hereunder is terminated by the Company for Cause pursuant to the provisions of Section 2.1(c) hereof, the Company shall have no further obligation to the Executive under this Agreement except to pay the Executive any accrued, but unpaid, Guaranteed Base and any vacation or sick leave benefits, which have accrued as of the date of termination of this Agreement, but were then unpaid or unused and unpaid business expenses. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(d) Termination by the Company with Notice. In the event the Executive's employment hereunder is terminated by the Company pursuant to the provisions of Section 2.1(d) hereof, the Executive shall be entitled to receive (i) any accrued, but unpaid, Guaranteed Base and any vacation or sick leave benefits, which have accrued as of the date of termination of this Agreement, but were then unpaid or unused and unpaid business expenses, and (ii) an amount payable in accordance with the Company's regular payroll periods equal to the greater of Executive's full monthly Guaranteed Base payable for three (3) months or the remainder of the then existing term of this Agreement. Any amount due the Executive under (i) of this Section shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(e) Termination by the Executive for Good Reason. In the event this Agreement is terminated by the Executive pursuant to the provisions of Section 2.1(e) hereof, the Executive shall be entitled to receive (i) any accrued, but unpaid, Guaranteed Base and any vacation or sick leave benefits which have accrued as of the date of termination of the Agreement, but were then unpaid or unused and unpaid business expenses and (ii) an amount equal to Executive's full monthly Guaranteed Base payable hereunder for the greater of three (3) months or the remainder of the then existing term of this Agreement payable in accordance with the Company's regular payroll periods. Any amount due the Executive under (i) of this Section shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(f) Termination by the Executive with Notice. In the event the Executive's employment hereunder is terminated by the Executive pursuant to the provisions of Section 2.1(f) hereof, all future compensation to which Executive is entitled and all future benefits for which Executive is eligible shall cease and terminate as of the date of termination. Executive shall be entitled to any accrued, but unpaid or unused, Guaranteed Base, vacation or sick leave benefits and unpaid business expenses through the date of termination. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of Executive's Employment hereunder.

(g) Termination of Obligations of the Company Upon Payment of Compensation. Upon payment of the amount, if any, due the Executive pursuant to the preceding provisions of this Article II, the Company shall have no further obligation to pay wages to the Executive under this Agreement.

### ARTICLE III.

#### **PROTECTION OF INFORMATION AND NON-COMPETITION AND NON-SOLICITATION**

3.1 Company's Agreements. Immediately upon execution of this Agreement and continuing thereafter during the course of Executive's employment by Company, Company agrees: (i) to provide Executive with access to its Trade Secrets and Confidential Information (as defined herein); (ii) to provide Executive with continuing training, development and education; and (iii) to provide Executive with Trade Secrets and Confidential Information about, and the opportunity to develop relationships with, Company's employees, customers and customer's employees and agents.

3.2 Protective Covenants. The Executive recognizes that Executive's employment by the Company is one of the highest trust and confidence because (i) the Executive will become fully familiar with all aspects of the Company's business during the term of this Agreement, (ii) certain information of which the Executive will gain knowledge during Executive's employment is proprietary and confidential information which is special and peculiar value to the Company, and (iii) if any such proprietary and confidential information were imparted to or became known by any person, including the Executive, engaging in a business in competition with that of the Company, hardship, loss or irreparable injury and damage could result to the Company, the measurement of which would be difficult if not impossible to ascertain. The Executive acknowledges that the Company has developed unique skills, concepts, designs, marketing programs, marketing strategy, business practices, methods of operation, trademarks, licenses, hiring and training methods, financial and other confidential and proprietary information



concerning its operations and expansion plans, price lists, pricing policies, pricing contracts, rebate programs, sales and operating procedures, methods and techniques, management methods, operating techniques and capabilities, training manuals and procedures, marketing and development plans, financial and accounting data, information technology and computer systems ("Trade Secrets"). Confidential Information, as used in this Agreement, includes, but is not limited to, the Company's written, oral, electronic and visual information relating to (1) lists of, and all information about, each person or entity to which Company has sold Products or has provided services of any kind, or with which Company has entered into an agreement, or made a sale of any kind, including both current and prospective (all of which are hereinafter collectively referred to as "Customers" or individually as "Customer"); (2) all the Customers' contact information, which includes information about the identity and location of individuals with decision-making authority and the particular preferences, needs or requirements of the Customer, or such individual, with respect to quantities, transportation or delivery of Products, or particular needs or requirements of Customers based on geographical, economic or other factors; (3) all of Company's pricing and formulas, methodologies, practices and systems, including those based upon particular Customers, particular quantities, or based on geographic, seasonal, economic or other factors, including all information about the price, terms, quantities or conditions of products or services sold or furnished by Company to its Customers; (4) financial information or any kind relating to sales and purchase histories, trend information about the growth or shrinking of a particular Customer's needs, purchases or requirements; profit margins or markups or rebate programs, as well as all information about the costs and expenses which Company incurs to provide products or services to its Customers; (5) Company's procedures, forms, methods, and systems for marketing to Customers and potential customers including all of its Customer development techniques and procedures, including training and other internal manuals, forms and documents; (6) technical information about Company or any of its Customers or suppliers, including information about computer programs, source codes, object codes, or software, data bases, data, equipment, systems or procedures; (7) financial information of any kind about Company or its operations; and (8) all information about Company's employees, including their addresses and phone numbers, pay rates, benefits and compensation packages or history. Therefore, the Executive agrees that it is necessary for the Company to protect its business from such damage, and the Executive further agrees that the following covenants constitute a reasonable and appropriate means, consistent with the best interest of both the Executive and the Company, to protect the Company against such damage and shall apply to and be binding upon the Executive as provided herein:

(a) Trade Secrets/Confidential Information. The Executive recognizes that Executive's position with the Company is one of the highest trust and confidence by reason of the Executive's access to and contact with certain Trade Secrets and Confidential Information of the Company. The Executive agrees and covenants to use Executive's best efforts and exercise utmost diligence to protect and safeguard the Trade Secrets of the Company. The Executive further agrees and covenants that, except as may be required by the Company in connection with this Agreement, or with the prior written consent of the Company, the Executive shall not, either during the term of this Agreement or thereafter, directly or indirectly, use for the Executive's own benefit or for the benefit of another, or disclose, disseminate, or distribute to another, any Trade Secret (whether or not acquired, learned, obtained, or developed by the Executive alone or in conjunction with others) of the Company and Confidential Information. All correspondence, memoranda, notes, records, drawings, documents, files, mailing or contact lists, personnel lists or files, computer software or programs or files or other documents, programs or writings whatsoever made, compiled, acquired, or received by the Executive during the term of this Agreement related to Executive's employment or performance hereunder, arising out of, in connection with, or related to any business of the Company, including, but not limited to, Trade Secrets and Confidential Information, are, and shall continue to be, the sole and exclusive property of the Company, and shall, together with all copies thereof and all advertising literature, be returned and delivered to the Company by the Executive immediately, without demand, upon the termination of this Agreement, or at any time upon the Company's demand.

(b) Restriction on Soliciting Employees of the Company. The Executive covenants that during the term of this Agreement and for the non-solicitation period set forth on Exhibit "A" ("Non-Solicitation Period") following the termination of this Agreement, Executive will not, either directly or indirectly, call on, solicit, employ, caused to be hired or take away, or attempt to call on, solicit, induce, employ, caused to be hired or take away any employee contractor, consultant, agent or representative, who has worked for the Company at any time within one (1) year of the date of Executive's termination from the Company, either for Executive or for any other person, firm, corporation or other entity. Further, Executive shall not induce any employee of the Company to terminate Executive's employment with the Company during the term of this Agreement or during the Non-Solicitation Period. Notwithstanding anything to the contrary contained herein, general solicitations of employment by means of newspaper, periodical or trade publication advertisements not directed at employees of the Company shall not constitute a violation of this provision.

(c) Covenant Not to Compete/Restriction on Soliciting Customers. The Executive hereby covenants and agrees that during the term of this Agreement and for the one year after the termination of this Agreement, Executive will not without the prior written consent of the Company, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, shareholder (other than through ownership of publicly-traded capital stock of a corporation which represents less than five percent (5%) of the outstanding capital stock of such corporation), corporate officer, director, investor, financier or in any other individual or representative capacity, engage or participate or seek employment or accept employment with any business competitive with the business conducted by the Company within any county where the Company has physical operations and in any county contiguous to such county or is making an active effort to do business at the time of the execution of this Agreement. Additionally, Executive agrees and covenants, during the term of this Agreement and for the Non-Solicitation Period, not to, either directly or indirectly, call on, solicit, induce or take away, or attempt to call on, solicit, induce, take away, service or accept business from any customer of the Company (as of the date of termination of this Agreement) or induce, request or advise any such customer to terminate its relationship with the Company or request, induce or advise any customer of the Company to withdraw, curtail, modify or cancel their business with the Company. Further, during the term of this Agreement and the Non-Solicitation Period, Executive agrees and covenants not to use for Executive's benefit or for the benefit of another or to disclose, disseminate, distribute, divert, attempt to divert, take advantage of or attempt to take advantage of any actual or potential business opportunity of the Company, which the Executive became aware of in the performance of this Agreement.

(d) Survival of Covenants. Each covenant of the Executive set forth in this Article III shall survive the termination of this Agreement and shall be construed as an agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action of the Executive against the Company whether predicated on this Agreement or otherwise shall not constitute a defense to the enforcement by the Company of said covenant.

(e) Remedies. In the event of breach or threatened breach by the Executive of any provision of this Article III, the Company shall be entitled to relief by temporary restraining order, temporary injunction, or permanent injunction or otherwise, in addition to other legal and equitable relief to which it may be entitled, including any and all monetary damages which the Company may incur as a result of said breach, violation or threatened breach or violation. The Company may pursue any remedy available to it concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation, and the pursuit of one of such remedies at any time will not be deemed an election of remedies or waiver of the right to pursue any other of such remedies as to such breach, violation, or threatened breach or violation, or as to any other breach, violation, or threatened breach or violation.

(f) Limitations. The obligations of confidentiality regarding Trade Secrets shall not apply if (i) it was in the public domain prior to disclosure, (ii) such disclosure comes into the public domain through no fault of the Executive, or (iii) such disclosure is required by law or compelled by court order.

The Executive hereby acknowledges that the Executive's agreement to be bound by the protective covenants set forth in this Article III was a material inducement for the Company entering into this Agreement and agreeing to pay the Executive the compensation and benefits set forth herein. Further, Executive understands the foregoing restrictions may limit Executive's ability to engage in certain businesses during the period of time provided for, but acknowledges that Executive will receive sufficiently high remuneration and other benefits under this Agreement to justify such restriction.

#### ARTICLE IV. GENERAL PROVISIONS

4.1 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered, on the date delivered via overnight delivery service or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, addressed to the respective parties as follows:

<u>If to the Executive:</u>	As set forth in <u>Exhibit "A"</u>
<u>If to the Company:</u>	DXP Enterprises, Inc. 7272 Pinemont Houston, Texas 77040 ATTN: David R. Little

Either party hereto may designate a different address by providing written notice of such new address to the other party hereto.

4.2 Severability. If any provision contained in this Agreement is determined by a court of competent jurisdiction or an arbitrator pursuant to Section 5 below to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision which was determined to be void, illegal, or unenforceable had not been contained herein. If the restrictions contained in Article III are found by a court to be unreasonable or overly broad as to geographic area or time, or otherwise unenforceable, the parties intend for said restrictions to be "blue penciled" by said court so as to be reasonable and enforceable and, as so modified, to be fully enforced.

4.3 Waiver Modification, and Integration. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This instrument contains the entire agreement of the parties concerning employment and supersedes all prior and contemporaneous representations, understandings and agreements (including but not limited to any initial employment or independent contractor agreement) either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and all such prior or contemporaneous representations, understandings and agreements, both oral and written, are hereby terminated. This Agreement may not be modified, altered or amended except by written agreement of all the parties hereto.

4.4 Binding Effect. This Agreement shall be binding and effective upon the parties and their respective heirs, executors and successors. Neither party shall assign this Agreement without the prior written consent of the other party.

4.5 Governing Law. The parties intend that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to principles of conflicts of law.

4.6 Representation of Executive. The Executive hereby represents and warrants to the Company that the Executive has not previously assumed any obligations inconsistent with those contained in this Agreement. The Executive further represents and warrants to the Company that the Executive has entered into this Agreement pursuant to Executive's own initiative and that this Agreement is not in contravention of any existing commitments. The Executive acknowledges that the Company has entered into this Agreement in reliance upon the foregoing representations of the Executive.

4.7 Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

4.8 Company. For the purposes of this Agreement, Company shall include any parent, subsidiary division of the Company, or any entity, which directly or indirectly, controls, is controlled by, or is under common control with the Company.

4.9 Executive. Executive represents to the Company and agrees that Executive: (i) was specifically advised to and fully understands Executive's rights to discuss all aspects of this Agreement with an attorney and Executive has been represented by counsel regarding this Agreement, and (ii) has carefully read and fully understands the provisions of this Agreement.

ARTICLE V.  
**ARBITRATION**

5.1 Resolution of Disputes. In the event any dispute(s) arises between the parties with respect to the terms and provisions of this Agreement (a "Dispute"), the parties shall cooperate in good faith to resolve the Dispute(s). If the parties cannot resolve the Dispute(s) between themselves within ten (10) days after written notice of activation of the terms of this Article V, each party shall, within seven (7) days after the expiration of said 10 day period, select a mediator and shall notify the other party of such selection. The mediators shall have thirty (30) days from the expiration of said 7 day period to resolve the Dispute(s). If a resolution of the Dispute(s) does not occur through said mediation within said 30 days, the Dispute(s) shall be resolved by binding arbitration.

5.2 Arbitration. In the event any Dispute cannot be resolved through mediation the parties agree to submit such dispute(s) to binding non-appealable arbitration within ten (10) days from the expiration of the thirty (30) day period set out in Section 5.1. Any such arbitration arising hereunder shall be conducted in Houston, Texas in accordance with the rules of the American Arbitration Association then in effect including the rules governing employment disputes. Each party hereby submits itself to personal jurisdiction in Houston, Texas, for the purpose of such arbitration proceedings. Within fifteen (15) days from submitting the Dispute(s) to arbitration each party shall select its arbitrator. Then within twenty (20) days after said 15 days the two arbitrators shall select a third arbitrator. The three arbitrators shall have their first meeting within twenty (20) days after the selection of the third arbitrator. The arbitrators shall reach a final decision within one hundred eighty (180) days of their first meeting. The costs of arbitration shall be borne equally by the parties, except each party shall be responsible for such party's own arbitrator's and attorneys' fees.

ARTICLE VI.  
**CONFIDENTIALITY**

6.1 Confidentiality. This Agreement is confidential, and the substance may be disclosed only as mutually agreed by the parties or as may be required by law.

DXP Enterprises, Inc.

By:

**EXECUTIVE:**

\_\_\_\_\_

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EXHIBIT "A" TO  
EMPLOYMENT AGREEMENT

Name:

Position: Vice President

Guaranteed Base: \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00).

Bonus/commission: An annual bonus based on a bonus plan for similarly situated employees of the Company. Such bonus plan may be revised, modified or changed by the Company prior to the commencement of each annual bonus period.

Non-Solicitation Period: Two (2) years.

Home Address:

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EXHIBIT C

Form of Landlord Consent to Assignment and Estoppel Certificate

\_\_\_\_\_, 2011

To: \_\_\_\_\_ (“Tenant”)

\_\_\_\_\_

Attn: \_\_\_\_\_

and

DXP Enterprises, Inc., and its successors and assigns (“DXP”)

7272 Pinemont

Houston, Texas 77040

Attn: David R. Little

Re: \_\_\_\_\_ (the “Lease”) dated \_\_\_\_\_, \_\_\_\_\_ by and between  
\_\_\_\_\_, as lessor (“Landlord”) and Tenant with respect to the premises located at  
\_\_\_\_\_ (the “Premises”).

Ladies and Gentlemen:

Tenant and DXP are contemplating entering into an Asset Purchase Agreement by and among Tenant, the shareholders of Tenant and DXP (the “Purchase Agreement”) whereby, among other things, Tenant will sell its business and assets to DXP and, in connection therewith, will assign, transfer and convey to DXP the Lease (the “Assignment”).

This Landlord Consent to Assignment and Estoppel Certificate (this “Certificate”) is furnished by Landlord at the request and for the benefit of Tenant and DXP in connection with the transactions contemplated by the Purchase Agreement, and Landlord acknowledges that Tenant and DXP are contemplating entering into the Purchase Agreement, as well as certain other agreements, in reliance upon Landlord’s statements made herein.

Landlord hereby represents, warrants, certifies and agrees to the following, as of the date hereof:

1. The Lease has not been amended or modified in any way, other than any amendments set out on the attached Exhibit A, nor are there any side letters or other arrangements relating to the Premises. A true, complete and correct copy of the Lease, including any and all amendments, is attached to this Certificate as Exhibit A.
2. Landlord’s interest under the Lease has not been assigned.
3. The Lease is presently in full force and effect and is the valid and binding obligation of Landlord, enforceable in accordance with its terms.
4. Neither Tenant nor Landlord is in default under the Lease nor does any state of facts exist which with the passage of time or the giving of notice, or both, could constitute a default under the Lease.
5. Tenant is in possession of the Premises and is fully obligated to pay and is paying the rent and other charges due under the Lease and is fully obligated to perform and, to Landlord’s best knowledge, is performing all of the other obligations of Tenant under the Lease.
6. The commencement date of the term of the Lease is \_\_\_\_\_, \_\_\_\_\_ and the termination date of the existing term of the Lease is \_\_\_\_\_, \_\_\_\_\_.
7. There are no existing defenses which Landlord has against the enforcement of the Lease by Tenant.
8. The base rent, common area and operating charges being paid under the Lease is currently \$\_\_\_\_\_ per month (\$\_\_\_\_\_ per annum). No rent has been paid more than one (1) month in advance of the due date. No security deposit is being held by Landlord.
9. No parties have guaranteed the payment or performance of any of Tenant’s obligations under the Lease.
10. There are no actions, whether voluntary or otherwise, pending or threatened against Landlord pursuant to the bankruptcy or insolvency laws of the United States or any similar state laws.
11. To Landlord’s knowledge, there are no outstanding notices of violations relating to the failure of the Premises to comply with

any laws.

12. Landlord hereby consents to the Assignment as required by Section \_\_\_ of the Lease, and agrees and acknowledges that the Assignment does not constitute a default or breach of any provision under the Lease or give rise to any right of termination of the Lease by the Landlord. Landlord further waives and releases Tenant from any obligations or conditions set forth in the Lease that would otherwise be triggered solely by virtue of the Assignment. Landlord further agrees that Tenant shall not have any obligation or liability under the Lease after 11:59:59 p.m., New York, New York time, on October \_\_\_\_, 2011, which is the effective time of the closing of the transactions contemplated by the Purchase Agreement (the "Effective Time") except for (a) any obligation that Tenant was required to perform under the Lease prior to the Effective Time and (b) any obligation of Tenant under the Lease that exists prior to the Effective Time as a result of Tenant's breach of the Lease prior to the Effective Time, even though such breach is not known or discovered until after the Effective Time; any other obligations arising under the Lease on or after the Effective Time with respect to the period from and after the Effective Time shall be the obligations of DXP.

13. Landlord acknowledges that the Assignment and this Certificate will be effective as of the Effective Time and, if the transactions contemplated by the Purchase Agreement are not consummated, the Assignment and this Certificate will be null and void.

14. The representative of the Landlord who executes this Certificate on its behalf is duly authorized to do so. This Certificate shall inure to the benefit of Tenant and DXP and their respective successors and assigns.

[Signatures on Following Page]

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Executed as an instrument under seal as of the date set forth above.

**LANDLORD:**

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By:  
Printed Name:  
Title:

**TENANT:**

By:  
Printed Name:  
Title:

**DXP:**

DXP ENTERPRISES, INC.

By:  
Printed Name:  
Title:

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**Exhibit A**  
Lease (see attached)

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## EXHIBIT D

### Form of Escrow Agreement

This ESCROW AGREEMENT (this "Agreement") is made and entered into as of October \_\_, 2011, by and among DXP ENTERPRISES, INC., a Texas corporation ("Buyer"), KENNETH CROSBY, LLC, KENNETH CROSBY NEW YORK, LLC, KENNETH CROSBY SOUTHERN TIER, LLC, and KENNETH CROSBY WESTERN NEW YORK, LLC, each a New York limited liability company (collectively, the "Seller" and together with Buyer, sometimes referred to individually as "Party" or collectively as the "Parties"), and JPMorgan Chase Bank, National Association, as Escrow Agent (the "Escrow Agent").

### **BACKGROUND**

A. Buyer, the Seller, and the Shareholders (as defined in the Purchase Agreement) are parties to an Asset Purchase Agreement, dated as of October \_\_, 2011 (the "Purchase Agreement"), pursuant to which Buyer will acquire the Business, Transferred Assets and Assumed Liabilities of the Seller.

B. The parties desire to establish an escrow account on the terms and conditions set forth herein. Initially Buyer, pursuant to Sections 1.03(a) and 10.04 of the Purchase Agreement, shall deposit the Escrow Amount with the Escrow Agent to be held in escrow. The Escrow Amount, Escrow Earnings (as hereinafter defined) are collectively referred to as the "Escrow Deposit". The "Escrow Amount" is immediately available funds in the sum of One Million Two Hundred Thirty Seven Thousand Five Hundred AND 00/100 Dollars (\$1,237,500.00).

C. The parties hereto desire to appoint the Escrow Agent to receive, hold and invest and reinvest (as applicable) the Escrow Deposit, together with any interest or other income earned thereon ("Escrow Earnings"), and to disburse the Escrow Deposit, in accordance with the terms set forth herein. The Escrow Agent has agreed to act as such upon the terms, covenants and conditions hereinafter set forth.

D. A material condition to the consummation of the transactions contemplated by the Purchase Agreement is that the parties hereto enter into this Agreement.

E. The Parties acknowledge that three of the four entities which are collectively referred to as Seller intend to dissolve prior to the termination of this Agreement.

### **AGREEMENT**

In consideration of the mutual representations, warranties and covenants contained herein, and upon and subject to the terms and the conditions hereinafter set forth, the parties do hereby agree as follows:

1. **Defined Terms**. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement. As between Buyer and the Seller, the provisions of the Purchase Agreement are hereby incorporated herein by reference, but only as the context of this Agreement may require. The Escrow Agent is not a party to the Purchase Agreement and shall, therefore, act only in accordance with the terms and conditions contained in this Agreement, and it shall not have any liability under, nor duty to inquire into, the terms and provisions of the Purchase Agreement, and the Escrow Agent shall have no knowledge of any term not defined within this Agreement. "Business Day" shall mean any day of the year on which national banking institutions in Texas and New York are open to the public for conducting business and are not required or authorized to close.

2. **Deposit of Escrow Amount**. On October \_\_, 2011 ("Closing"), Buyer will deliver the Escrow Amount to the Escrow Agent for deposit with the Escrow Agent, in accordance with Sections 1.03(a) and 10.05 of the Purchase Agreement.

In addition, from time to time, when any amount (each an "Escrow Agent Payment Amount") may be paid out of the Escrow Account by Buyer and/or Seller to satisfy obligations owed to the Escrow Agent pursuant to Section 9 or Section 10 hereof, then each Party shall promptly and, in any case, within five (5) Business Days deposit an amount equal to half of the relevant Escrow Agent Payment Amount into the Escrow Account, to be used and treated in like manner as other funds in the Escrow Account.

3. **Escrow**. Upon receipt of the Escrow Amount, the Escrow Agent shall upon request acknowledge receipt to the Seller and Buyer and shall hold, administer and dispose of the Escrow Deposit pursuant to the terms of this Agreement (the "Escrow"). All rights associated with the Escrow Deposit shall be exercised by the Escrow Agent, and shall in no event be exercisable by or rest with the Seller or Buyer, unless otherwise provided for herein. During the term of this Agreement, the Escrow Deposit shall be invested in a JPMorgan Money Market Deposit Account ("MMDA") or a successor or similar investment offered by the Escrow Agent, unless otherwise instructed by the Parties and as shall be acceptable to the Escrow Agent. MMDA have rates of compensation that may vary from time to time based upon market conditions. Instructions to make any other investment ("Alternative Investment"), must be in writing and shall specify the type and identity of the investments to be purchased and/or sold. The Escrow Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent or any of its affiliates may receive compensation with respect to any Alternative Investment directed hereunder including without limitation charging any applicable agency fee in connection with each transaction. The Parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of moneys held in the Escrow Deposit or the purchase, sale, retention or other disposition of any investment described herein. The Escrow Agent shall not have any liability for any loss sustained as a result of any investment in an investment

made pursuant to the terms of this Agreement or as a result of any liquidation of any investment prior to its maturity or for the failure of the Parties to give the Escrow Agent instructions to invest or reinvest the Fund. The Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Agreement.

In the event that a JPMorgan Money Market Mutual Fund (collectively, “MMMF”) is selected in writing by the Parties and acceptable to the Escrow Agent, such selection will be based upon the Parties independent review of prospectuses previously delivered to the Parties. The Parties acknowledge that an affiliate of Escrow Agent, JPMorgan Asset Management, serves as investment manager for the selected MMMF and receives fees from the invested funds for services rendered by Escrow Agent as further provided within this Agreement.

Market values, exchange rates and other valuation information (including without limitation, market value, current value or notional value) of any Alternative Investment furnished in any report or statement may be obtained from third party sources and is furnished for the exclusive use of the Parties. Escrow Agent has no responsibility whatsoever to determine the market or other value of any Alternative Investment and makes no representation or warranty, express or implied, as to the accuracy of any such valuations or that any values necessarily reflect the proceeds that may be received on the sale of an Alternative Investment.

4. **Distributions of the Escrow Deposit; Termination of the Escrow**. The Escrow Deposit shall be distributed by the Escrow Agent in accordance with the following:

(a) From time to time before 5PM New York Time on December 31, 2012 (the “Release Date”), Buyer may give notice (an “Indemnification Notice”) to the Seller and the Escrow Agent specifying the nature and dollar amount (to the extent known) of a claim relating to any claim for indemnification (a “Claim”) Buyer may have under Article 10 of the Purchase Agreement and as to which the Escrow Deposit applies. If the Seller does not deliver notice to Buyer and the Escrow Agent disputing such Claim (a “Counter Indemnification Notice”) by 5PM New York Time within thirty (30) days, or the following Business Day if such day is not one after the Escrow Agent’s receipt of the Indemnification Notice (a “Dispute Deadline”), then the dollar amount of the Claim set forth in Buyer’s Indemnification Notice shall be deemed conclusive for purposes of this Agreement, and the Escrow Agent shall pay to (or as directed by) Buyer at their corresponding wire instructions in Section 15(b) the dollar amount of the Claim in the Indemnification Notice, as well as any and all Escrow Earnings with respect to such Claim amount earned from the date of initial deposit of the Escrow Amount (which, in any event, shall be a proportional amount of the Escrow Earnings to such date corresponding to the percentage of the Escrow Amount represented by such Claim amount and such amount shall be included in such Indemnification Notice), from the Escrow Deposit within five (5) Business Days following such applicable Dispute Deadline. The Escrow Agent shall not inquire into or consider whether a Claim complies with the requirements of the Purchase Agreement.

(b) If a Counter Indemnification Notice is given with respect to a Claim, the Escrow Agent shall make payment with respect to an Indemnification Notice only (i) in accordance with joint written instructions of Buyer and the Seller or (ii) after a final decision has been rendered by a court and all appeals have been exhausted (or the time to file a notice of appeal has past) or (only if agreed by Buyer and the Seller in their respective sole discretion) binding arbitrator to enforce an award with respect to the amount of such Claim, and then in accordance with such decision, and such prevailing Party delivers a written instruction along with such final decision or arbitration to the Escrow Agent stating that the court’s decision or arbitration is final and non-appealable. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court or binding resolution of arbitration, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction. Buyer and the Seller hereby agree that any amounts paid to Buyer hereunder in respect of any Claim (whether under subsection (a) or (b) of this Section 4) shall include the payment of the corresponding amount of the Escrow Earnings as such amount is included in such Claim amount earned from the date of initial Escrow Deposit.

(c) On or promptly and as soon as possible after the Business Day following the Release Date, the Escrow Agent shall release to the Seller at their corresponding wire instructions in Section 15(b) a net amount equal to (i) the remaining balance of the Escrow Deposit and Escrow Earnings as of such date *minus* (ii) the amount of all Unresolved Claims *plus* all Escrow Earnings with respect to such Unresolved Claims amounts earned from the date of initial Escrow Deposit (which, in any event, shall be a proportional amount of the Escrow Earnings to such date corresponding to the percentage of the Escrow Deposit represented by the aggregate amount of such Unresolved Claims, such amount identified in the Indemnification Notice). For purposes of this Agreement, “Unresolved Claims” means, as of the Release Date, the aggregate amount of Claims that either (i) remain subject to a dispute pursuant to a Counter Indemnification Notice or (ii) for which an Indemnification Notice has been delivered prior to the Release Date but for which the full release of applicable amounts from the Escrow Deposit has not been made, as the case may be, as of the Release Date. Buyer and the Seller hereby agree to execute and deliver to the Escrow Agent promptly on, or promptly and as soon as possible after, the Release Date a joint written notice directing the disbursement of the corresponding amount (as calculated pursuant to the first sentence of this paragraph) of the Escrow Deposit and Escrow Earnings pursuant to this Section 4(c).

(d) For purposes of any Unresolved Claims, (i) with respect to any Unresolved Claim for which an Indemnification Notice has been delivered before the Release Date but for which a full release of applicable amounts from the Escrow Deposit and Escrow Earnings has not been made as of the Release Date, provided that such Unresolved Claim does not become the subject of a Counter Indemnification Notice, the Escrow Agent shall release the applicable portion of the Escrow Deposit subject to such Unresolved Claim, along with any and all Escrow

Earnings with respect to such Unresolved Claim amount earned from the date of initial Escrow Deposit of the Escrow Amount (which, in any event, shall be a proportional amount of the Escrow Earnings to such date corresponding to the percentage of the Escrow Deposit represented by such Unresolved Claim amount, such amount as identified in the Indemnification Notice), in accordance with the terms of subsections (a) or (b) (as applicable) of this Section 4 with respect to such Claim and (ii) with respect to any Unresolved Claim that is or becomes the subject of a Counter Indemnification Notice, the Escrow Agent shall release from the Escrow Deposit the applicable amount in accordance with subsection (b) of this Section 4. After the resolution of all Unresolved Claims, any amount of the Escrow Deposit and Escrow Earnings that was the subject of such Unresolved Claims but that is not released pursuant to the immediately preceding sentence shall be released by the Escrow Agent at the appropriate irrevocable wire instructions set forth in Section 15(b). Buyer and the Seller hereby agree to execute and deliver to the Escrow Agent on such date as no Unresolved Claims remain (after the Release Date) a joint written notice directing the disbursement of the corresponding amount (as calculated pursuant to the immediately preceding sentence) of the Escrow Deposit and Escrow Earnings pursuant to this Section 4(d).

(e) Buyer and the Seller agree that Buyer shall not submit an Indemnification Notice for purposes hereof unless Buyer makes a reasonable determination that a Claim is or may be subject to indemnification under the terms of the Purchase Agreement, including by giving effect to the provisions of Article 10 of the Purchase Agreement and that the Seller shall be entitled to raise as a dispute in any Counter Indemnification Notice whether such Claim is subject to indemnification under the Purchase Agreement due to the limitations provided in such Article 10.

(f) Except as set forth herein, no Escrow Earnings shall be remitted to Buyer and/or the Seller for the period of time the Escrow Deposit is held by the Escrow Agent.

(g) Only upon delivery of the entire Escrow Deposit and all Escrow Earnings by the Escrow Agent in conformity with this Agreement, shall this Agreement terminate, subject to the provisions of Section 6.

5. **Duties of the Escrow Agent**. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement, which shall be deemed purely ministerial in nature, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between the Parties, in connection herewith, if any, including without limitation the Purchase Agreement (the “Underlying Agreement”), nor shall the Escrow Agent be required to determine if any person or entity has complied with any Underlying Agreement, nor shall any additional obligations of the Escrow Agent be inferred from the terms of any Underlying Agreements, even though reference thereto may be made in this Agreement. In the event of any conflict between the terms and provisions of this Agreement, those of any Underlying Agreement, any schedule or exhibit attached to the Agreement, or any other agreement among the Parties, the terms and conditions of this Agreement shall control. Notwithstanding the dissolution of any Seller, the Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the appropriate Party or Parties as evidenced by the signatures of one of their designated persons as set forth in Schedule 1 (each an “Authorized Representative”), without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall not be liable to any Party, any successor-in-interest, any beneficiary or other person for refraining from acting upon any instruction setting forth, claiming, containing, objecting to, or related to the transfer or distribution of the Fund, or any portion thereof, unless such instruction shall have been delivered to the Escrow Agent in accordance with Section 15 below and the Escrow Agent has been able to satisfy any applicable security procedures as may be required thereunder. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Fund, including, without limitation, the Escrow Deposit nor shall the Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.

6. **Liability of the Escrow Agent; Withdrawal**. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its reasonable judgment (other than acts of gross negligence or willful misconduct), and may rely conclusively and shall be protected in acting upon any court order (including without limitation any court order regarding disbursement of any amount of the Escrow Fund), reasonable advice of counsel (whether such counsel shall be regularly retained or specifically employed) chosen by the Escrow Agent, or document executed by an Authorized Representative of the Buyer and the Seller authorizing action (or inaction) in accordance with these instructions by the Escrow Agent (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is reasonably believed by the Escrow Agent to be genuine and to be signed or presented by the proper person(s). The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer of the Escrow Agent unless it shall be proved by a final adjudication of a court of competent jurisdiction that the Escrow Agent was grossly negligent or its willful misconduct in ascertaining the pertinent facts or acted intentionally in bad faith was the primary cause of any loss to either Party or any successor-in-interest of such Party. The Escrow Agent shall not be bound by any notice of demand, or any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by an appropriate Authorized Representative and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. The Escrow Agent may execute customary ministerial and record keeping responsibilities hereunder through its authorized agents. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such counsel, accountants or other skilled persons. The Parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary

notwithstanding, in no event shall the Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

7. **Indemnification**. (a) Buyer and the Seller agree, severally, to indemnify, defend and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (the "Indemnitees") from and against, any loss, liability, claims, actions, damages, penalties, judgments, settlements, litigation, investigations, or expenses (including without limitation the reasonable fees and expenses and disbursements of its counsel and experts and their staffs and all expense of document location, duplication and shipment)(collectively "Losses") incurred without gross negligence, bad faith or intentional misconduct on the part of the Escrow Agent arising out of or in connection with (i) its entering into this Agreement and carrying out its duties hereunder, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitee, except in the case of any Indemnitee to the extent that such Losses are finally adjudicated by a court of competent jurisdiction to have been primarily caused by the gross negligence or willful misconduct of such Indemnitee, or (ii) its following any instructions or directions, whether joint or singular, from the Parties, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The foregoing indemnities in this paragraph shall survive the resignation, removal or substitution of the Escrow Agent or the termination of this Agreement.

(b) The Parties hereby grant the Escrow Agent a lien on, right of set-off against and security interest in, the Escrow Deposit for the payment of any claim for indemnification, fees, expenses and amounts due to the Escrow Agent or an Indemnitee. In furtherance of the foregoing, the Escrow Agent is expressly authorized and directed, but shall not be obligated, to charge against and withdraw from the Escrow Deposit for its own account or for the account of an Indemnitee any amounts due to the Escrow Agent or to an Indemnitee under either Sections 6, 7 or 9 of this Agreement. In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrow Deposit, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.

8. **Succession**. (a) The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) days advance notice in writing of such resignation to the Parties specifying a date when such resignation shall take effect. If the Authorized Representatives of the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto. Escrow Agent's sole responsibility after such thirty (30) day notice period expires shall be to hold the Escrow Deposit (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery Escrow Agent's obligations hereunder shall cease and terminate, subject to the provisions of Section 7(b). In accordance with Section 7(b), the Escrow Agent shall have the right to withhold an amount equal to any amount due and owing to the Escrow Agent, plus any costs and expenses the Escrow Agent shall reasonably believe may be incurred by the Escrow Agent in connection with the termination of the Agreement.

(b) Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.

9. **The Escrow Agent's Fee**. Buyer and the Seller agree as between themselves to each pay one-half (1/2) of the Escrow Agent's fees (as such fees are set forth on Schedule 2 hereto). The Escrow Agent shall be entitled to reimbursement from as between the Buyer and the Seller (one-half (1/2) each) for any reasonable expenses or disbursements incurred in connection with the performance of the Escrow Agent's obligations hereunder. Buyer and the Seller shall each remit their respective shares of such fees and reimbursable amounts to Escrow Agent promptly upon the execution of this Agreement and from time to time thereafter. The Escrow Agent shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction, except that the Escrow Agent shall not be indemnified against any loss, liability or expense arising out of its gross negligence, bad faith or willful misconduct. Such indemnity shall survive the termination or discharge of this Agreement or resignation of the Escrow Agent.

With respect to all of the fees and other amounts due to Escrow Agent from Seller described in this Section 9, *if* there occurs the dissolution of any of Kenneth Crosby, LLC, Kenneth Crosby Southern Tier, LLC, or Kenneth Crosby Western New York, LLC as entities, *then* Kenneth Crosby New York, LLC agrees that it shall be liable to pay to the Escrow Agent all such fees and amounts.

For the avoidance of doubt, Kenneth Crosby New York, LLC agrees that it shall not dissolve on or before December 31, 2012.

10. **Escrow Agent In The Event Of Disagreement**. In the event of a disagreement between the Buyer and Seller, the Buyer and an Authorized Representative of a Seller, or the Buyer and a successor-in-interest to a Seller, resulting in adverse claims and demands being made in connection with, or for, the Escrow Deposit, Escrow Agent shall refuse to comply with the claims or demands as long as such disagreement shall continue. In so refusing, Escrow Agent shall make no delivery or other disposition of the Escrow Deposit, and in so doing Escrow Agent shall not be or become liable in any way to any person for its failure or refusal to comply with such conflicting or adverse demands. Escrow Agent shall be entitled to continue refraining from acting and/or refusing to act until Escrow Agent receives one or more of the following:

(a) an authorization of a particular action executed by all parties to the disagreement; or

(b) a certified or file-stamped copy of a court order resolving the disagreement or directing a specific distribution of all or any portion of the Escrow Deposit; or

(c) ruling pursuant to arbitration in accordance with New York State law resolving the disagreement or directing a specific distribution of all or any portion of Escrow Deposit.

Upon receipt of any such document, Escrow Agent shall promptly act according to its terms thereby being relieved from any duty, responsibility or liability arising from the adverse claims and demand or from the terms of this Agreement. Further, in the event of the occurrence of any dispute between the parties hereto with respect to the Escrow Deposit, Escrow Agent may, without prejudice to any of its other rights hereunder, commence an action for interpleader in a court of competent jurisdiction, with respect to the Escrow Deposit. All of the costs and expenses incurred by Escrow Agent in connection with any such action, including reasonable attorney fees, shall be paid as between the Parties one half (1/2) by Buyer and one half (1/2) by Seller; provided that, *if* there occurs the dissolution of any of Kenneth Crosby, LLC, Kenneth Crosby Southern Tier, LLC, or Kenneth Crosby Western New York, LLC as entities, *then* Kenneth Crosby New York, LLC agrees that it shall be liable to pay to the Escrow Agent the amounts of all such costs and expenses.

For the avoidance of doubt, Kenneth Crosby New York, LLC agrees that it shall not dissolve on or before December 31, 2012.

11. **Inspection**. All funds or other property held as part of the Escrow Deposit shall at all times be clearly identified as being held by the Escrow Agent hereunder. Any party hereto may at any time during the Escrow Agent's business hours (with reasonable notice) inspect any records or reports relating to the Escrow Deposit.

12. **Accounting by Escrow Agent**. The Escrow Agent shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be made, including such specific records as shall be agreed upon in writing among Buyer, the Seller and the Escrow Agent. Within fifteen (15) days following the close of each calendar month, the Escrow Agent shall deliver to Buyer and the Seller (or to any other entity or person as directed by an Authorized Representative of Seller upon the dissolution of a Seller), a monthly statement, setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), and showing all cash, securities and other property held at the end of such month.

13. **Tax Reporting of Interest or Other Income Accrued with respect to the Escrow Fund**. The Parties have provided the Escrow Agent with their respective fully executed Internal Revenue Service ("IRS") Form W-8, or W-9 and/or other required documentation. All interest or other income earned under this Agreement shall be allocated to Kenneth Crosby New York, LLC and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Deposit by Kenneth Crosby New York, LLC whether or not said income has been distributed during such year. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, and shall remit such taxes to the appropriate authorities. The Parties hereby represent to the Escrow Agent that (i) there is no sale or transfer of an United States Real Property Interest as defined under IRC Section 897(c) in the underlying transaction giving rise to this Agreement; and (ii) such underlying transaction does not constitute an installment sale requiring tax reporting or withholding of imputed interest or original issue discount to the IRS or other taxing authority.

14. **Notices**. All notices, requests, consents and other communications required or permitted hereunder will be in writing and will be deemed given: (a) when delivered if delivered personally (including by courier); (b) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (c) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; or (d) upon receipt of a confirmed transmission, if sent by telecopy or facsimile transmission, in each case to the parties at the following addresses:

- (a) if to any Seller:
  - Eugene W. Baldino, CEO
  - Jasco Family of Companies
  - 1390 Mt. Read Blvd.
  - Rochester, New York 14606
- (V) (585) 254-7000
- (F) (585) 254-2655

Copies to:  
Kenneth A. Marvald  
Vice President & General Counsel  
Jasco Family of Companies  
1001 Lexington Avenue  
Rochester, NY 14606  
(V) (585) 546-6844  
(F) (585) 546.8107

- (b) if to Buyer to:
  - DXP Enterprises, Inc.
  - 7272 Pinemont
  - Houston, TX 77040
  - Facsimile: (713) 996-4701
  - Attention: David R. Little, Chief Executive Officer

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

Looper Reed & McGraw, P.C.  
1300 Post Oak Blvd., Suite 2000  
Houston, TX 77056  
Facsimile: (713) 986-7216  
Attention: Gary A. Messersmith

- (c) if to Escrow Agent to:  
JPMorgan Chase Bank N.A.  
Escrow Services  
4 New York Plaza, 21st Floor  
New York, NY 10004

Attn: Sandra Frierson/Chris Palermo  
Fax: 212-623-6168

or to such other person or address as a party may designate in writing.

Notwithstanding the above, in the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by an officer of the Escrow Agent or any employee of the Escrow Agent who reports directly to any such officer at the above-referenced office. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

**15. Security Procedures.** Notwithstanding anything to the contrary as set forth in Section 14, any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of funds, including but not limited to any such funds transfer instructions that may otherwise be set forth in a written instruction permitted pursuant to Section 4 of this Agreement, may be given to the Escrow Agent only by confirmed facsimile and no instruction for or related to the transfer or distribution of the Escrow Deposit, or any portion thereof, shall be deemed delivered and effective unless the Escrow Agent actually shall have received such instruction by facsimile at the number provided to the Parties by the Escrow Agent in accordance with Section 14 and as further evidenced by a confirmed transmittal to that number.

(a) In the event funds transfer instructions are so received by the Escrow Agent by facsimile, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the appropriate Authorized Representative on Schedule 1 hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs for a Party may be changed only by such Party's Authorized Representative(s) and only in a writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the Authorized Representatives identified in Schedule 1, the Escrow Agent is hereby authorized both to receive written instructions from and seek confirmation of such instructions by telephone call-back to any one or more of Buyer's executive officers, ("Executive Officers"), as the case may be, which shall include the titles of Chief Executive Officer, Chief Financial Officer or Executive Vice President, as the Escrow Agent may select. Such "Executive Officer" shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. The Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by an Authorized Representative to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Escrow Agent may apply any of the Fund for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated.

(b) Buyer acknowledges that the Escrow Agent is authorized to use the following funds transfer instructions to disburse any funds due to Buyer under this Agreement without a verifying call-back as set forth in Section 15(a) above:

Buyer's Bank account information:

Bank name: Wells Fargo Bank, N.A.  
Bank Address: 255 2<sup>nd</sup> Avenue South, Minneapolis, MN 55479  
ABA number: 121000248  
Account name: Master Operating Account  
Account number: 4121161004

Seller acknowledges that the Escrow Agent is authorized to use the following irrevocable funds transfer instructions to disburse any funds due to the Seller under this Agreement without a verifying call-back as set forth in Section 15(a) above, and they may not be changed:

Seller's Bank account information 1:

Bank name: JPMorgan Chase Bank, N.A.  
Bank Address: 1001 Lexington Avenue,  
Rochester, NY 14606  
ABA number: 021000021  
Account name: Kenneth Marvald Iola Trust Account  
Account number: 835832841

If for any reason the above Sellers wire instructions are no longer valid then only the following alternative wire instructions may be used:

Seller's Bank account information 2:

Bank name: M&T Bank, N.A.  
Bank Address: 626 Commerce Drive, 2<sup>nd</sup> Floor,

ABA number: 022000046

Account name: Woods Oviatt, Gilman, LLP

Account number: 7200016526

(c) The Parties acknowledge that the security procedures set forth in this Section 15 are commercially reasonable.

16. **Governing Law and Venue**. This Agreement shall be construed in accordance with and governed by the laws of the State of New York without giving effect to the principles of conflicts of law thereof. The exclusive, proper, and preferred venue of any claim or cause of action among the Seller, any successor-in-interest to a Seller, and Buyer concerning this Agreement shall lie in the United States District Court for the Western District of New York Monroe County, New York. No such party seeking to enforce any right under or with respect to this Agreement shall bring an action in any other forum. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgment), or other legal process, such Party shall not claim, and it hereby irrevocably waives, such immunity. The Escrow Agent and the Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. The Parties and any Authorized Representative represent, warrant and covenant that each document, notice, instruction or request provided by such Party to Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Section 8 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

17. **Binding Effect; Benefit; No Assignment**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Except for changes to funds transfer instructions for the Buyer only as provided in Section 15, and as expressly provided herein, this Agreement shall not be assignable by any party hereto without the prior written consent of the other parties; provided, however, that Buyer from time to time upon prior presentation to and internal approval by the Escrow Agent of the patriot act documents required under Section 22, may assign and grant a security interest in its rights, title and interest under this Agreement for collateral security purposes to any (i) lender(s) providing financing to Buyer, (ii) any of Buyer's subsidiaries or (iii) other affiliates of Buyer without any additional notice or consent of the Seller's hereto, and any such lender(s) may exercise from time to time all of the rights and remedies of Buyer hereunder; provided further that, in such case, Buyer shall remain primarily liable under this Agreement.

18. **Modification**. Subject to Section 17 hereof, this Agreement may be amended or modified at any time by a writing executed by the Seller, Buyer and the Escrow Agent.

19. **Counterparts; Facsimile Signatures**. This Agreement may be executed in one or more counterparts (including facsimile versions), each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of a facsimile, scan, .PDF file, or other electronic copy of an original signature shall be considered equivalent to the delivery of an original signature.

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

21. **Entire Agreement; Severability and Further Assurances**. This Agreement and all exhibits and schedules attached hereto constitute the entire agreement among the parties with respect to the administration of the Escrow Deposit and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power or remedy. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. Each of the parties hereto shall, and/or their respective Authorized Representatives, at the request of the other party, deliver to the requesting party all further documents or other assurances as may reasonably be necessary or desirable in connection with this Agreement.

22. **Patriot Act Disclosure**. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Parties acknowledge that Section 326 of the USA PATRIOT Act and the Escrow Agent's identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the Parties identity including without limitation name, address and organizational documents ("identifying information"). The Parties agree to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

23. **Compliance with Court Orders**. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or

entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

[ SIGNATURE PAGE FOLLOWS ]

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

**BUYER:**

DXP ENTERPRISES, INC.

By: \_\_\_\_\_  
David R. Little, Chief Executive Officer

**SELLER:**

KENNETH CROSBY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNETH CROSBY NEW YORK, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNETH CROSBY SOUTHERN TIER, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KENNETH CROSBY WESTERN NEW YORK, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW AGENT:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Christopher Palermo  
Title: Assistant Vice President

SIGNATURE PAGE TO ESCROW AGREEMENT

**Schedule 1**

- (a) Telephone Number(s) and authorized signature(s) for
- (b) Person(s) Designated to give Funds Transfer Instructions

If from Buyer:

<u>Name and Telephone Number</u>	<u>Signature</u>
1. Mac McConnell 713-996-4897	_____
2. Stephen Wick 713-996-4770	_____

If from Seller, or on or after dissolution of any or all of the Sellers:

<u>Name and Telephone Number</u>	<u>Signature</u>
1. Kenneth A. Marvald 585-546-6844	_____
2. Eugene W. Baldino 585-254-7000 ext 3355	_____

- (c) Telephone Number(s) for Call-Backs and Person(s) Designated to Confirm Funds Transfer Instructions

If from Buyer:

<u>Name</u>	<u>Telephone Number</u>
1. Mac McConnell	713-996-4897
2. Stephen Wick	713-996-4770

If from Seller, or on or after dissolution of any or all of the Sellers:

<u>Name</u>	<u>Telephone Number</u>
1. Kenneth A. Marvald	585-546-6844
2. Eugene W. Baldino	585-254-7000 ext. 3355

All funds transfer instructions must include the signature of the person(s) authorizing said funds transfer. Buyer and Seller agree that repetitive or standing settlement instructions will be effective as the funds transfer instructions of the stated beneficiary, whether or not authorized, if such settlement instructions are verified pursuant to the security procedure provided in the Agreement or such other security procedure to which Escrow Agent and Buyer and Seller may agree.

## Schedule 2

[Missing Graphic Reference]

### **Schedule of Fees for Escrow Agent Services**

#### Schedule of Fees for Escrow Agent Services

Based upon our current understanding of your proposed transaction, our fee proposal is as follows:

**Account Acceptance Fee** . . . . . **..... \$ waived**  
Encompassing review, negotiation and execution of governing documentation, opening of the account, and completion of all due diligence documentation. Payable upon Closing.

**Annual Administration Fee** . . . . . **\$ 2,500.00**  
The Administration Fee covers our usual and customary ministerial duties, including record keeping, distributions, document compliance and such other duties and responsibilities expressly set forth in the governing documents for each transaction. Payable upon Closing and annually in advance thereafter, without pro-ration for partial years.

#### **Extraordinary Services and Out-of Pocket Expenses**

Any additional services beyond our standard services as specified above, and all reasonable out-of-pocket expenses including attorney's or accountant's fees and expenses will be considered extraordinary services for which related costs, transaction charges, and additional fees will be billed at the Bank's then standard rate. Disbursements, receipts, investments or tax reporting exceeding 25 items per year may be treated as extraordinary services thereby incurring additional charges . The Escrow Agent may impose, charge, pass-through and modify fees and/or charges for any account established and services provided by the Escrow Agent, including but not limited to, transaction, maintenance, balance-deficiency, and service fees and other charges, including those levied by any governmental authority.

#### **Disclosure & Assumptions**

- Please note that the fees quoted are based on a review of the transaction documents provided and an internal due diligence review. JPMorgan reserves the right to revise, modify, change and supplement the fees quoted herein if the assumptions underlying the activity in the account, level of balances, market volatility or conditions or other factors change from those used to set our fees.
- The escrow deposit shall be continuously invested in a JPMorgan Chase Bank money market deposit account ("MMDA"). MMDA have rates of compensation that may vary from time to time based upon market conditions. The Annual Administration Fee would include a supplemental charge up to 25 basis points on the escrow deposit amount if another investment option were to be chosen.
- The Parties acknowledge and agree that they are permitted by U.S. law to make up to six (6) pre-authorized withdrawals or telephonic transfers from an MMDA per calendar month or statement cycle or similar period. If the MMDA can be accessed by checks, drafts, bills of exchange, notes and other financial instruments ("Items"), then no more than three (3) of these six (6) transfers may be made by an Item. The Escrow Agent is required by U.S. law to reserve the right to require at least seven (7) days notice prior to a withdrawal from a money market deposit account.
  - Payment of the invoice is due upon receipt.

#### **Compliance**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account. We may ask for information that will enable us to meet the requirements of the Act.

EXHIBIT E

Tax Allocation (Estimate)

**As of October 5, 2011**

**Current Assets**

Accounts receivable	\$7,117,000
Commission receivable	110,000
Inventory	1,714,000
Prepaid Expenses	49,000
Total Current Assets	\$8,990,000

**Fixed Assets**

	\$ 26,202
Deposits and Advances	_____
Total Assets	\$ 9,016,202

**Current Liabilities**

Accounts payable	\$ 2,742,000
Accrued Expenses	37,000
Accrued Payroll	361,000
Accrual – Employee Retirement	_____
Total Liabilities	\$ 3,140,000

Goodwill \$10,623,798

E-

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EXHIBIT F

Form of Assignment and Assumption of Lease

This Assignment and Assumption of Lease ("Assignment") is made effective as of October \_\_, 2011 (the "Effective Date"), by and between \_\_\_\_\_, LLC, a New York limited liability company ("Assignor"), and DXP ENTERPRISES, INC., a Texas corporation ("Assignee") in connection with that certain Asset Purchase Agreement between Assignor as Seller and Assignee as Buyer dated October \_\_\_\_, 2011 (the "Purchase Agreement").

**RECITALS**

A. \_\_\_\_\_, as Lessor, and Assignor, as Lessee, entered into that certain Lease Agreement executed by Lessor and Lessee on \_\_\_\_\_ \_\_, 20\_\_\_\_, as amended, (the "Lease"), pertaining to that certain real property together with improvements thereon situated at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. A copy of the Lease is attached hereto as Exhibit A.

B. Assignor desires to assign its right, title and interest under the Lease to Assignor, and Assignor desires to accept such assignment and assume the obligations of Lessee under the Lease.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

**AGREEMENT**

**1. Assignment** . Assignor hereby assigns, conveys, transfers, and sets over unto Assignee all of Assignor's right, title and interest in, to and under the Lease and the security deposit delivered by Assignor to Lessor in accordance with Paragraph \_\_ of the Lease (the "Security Deposit") effective October \_\_, 2011 ("the Effective Date").

**2. Assumption** . Assignee hereby accepts the assignment herein made and assumes and agrees to perform, fulfill and comply with all covenants and obligations to be performed, fulfilled or complied with by the Lessee under the Lease subject to the provisions of Paragraph \_\_ of the Lease arising from and after the Effective Date.

**3. Assignor's Indemnification of Assignee** . Assignor shall and does hereby indemnify, defend and hold Assignee, its officers, directors, employees, agents, shareholders and controlling Persons (as defined in the Purchase Agreement) and their respective representatives, successors and assigns harmless from and against all liabilities, obligations, actions, suits, proceedings, or claims, and all costs and expenses including without limitation reasonable attorneys' fees arising out of or based upon or attributable to or resulting from or relating to the Lease with respect to, (a) any obligation that Assignor was obligated to perform under the Lease prior to the Effective Date and (b) any obligation of Assignor under the Lease that is determined to have arisen prior to the Effective Date.

**4. Assignee's Indemnification of Assignor** . Assignee shall and does hereby indemnify, defend and hold Assignor, its officers, directors, employees, agents, shareholders and controlling Persons (as defined in the Purchase Agreement) and their respective representatives, successors and assigns harmless from and against all liabilities, obligations, actions, suits, proceedings, or claims, and all costs and expenses including without limitation reasonable attorneys' fees arising out of or based upon or attributable to or resulting from or relating to the Lease with respect to: (a) any obligation that Assignee is obligated to perform under the Lease on or subsequent to the Effective Date and (b) any obligation of Assignee under the Lease that is determined to have arisen on or subsequent to the Effective Date.

**5. No Modification** . The Lease is in full force and effect and has not been modified, supplemented or amended in any way by any written or oral agreements between Lessor and Assignor or Assignee or representations made to Assignor or Assignee or by the conduct of the parties.

**6. Binding Effect** . This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

**7. Counterparts** . This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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

**ASSIGNOR:**

\_\_\_\_\_, LLC, a New York limited liability company

By:

Print Name:

Title:

**ASSIGNEE:**

DXP ENTERPRISES, INC., a Texas corporation

By:

Print Name:

Title:

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**EXHIBIT A**  
**LEASE**  
**(follows this page)**

Exhibit A-

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EXHIBIT G

Closing Statement

Final Net Working Capital Calculation

[Missing Graphic Reference]

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EXHIBIT H

Membership Interests Ownership

**KENNETH CROSBY NEW YORK LLC**

Members

Estate of Jayne C. Summers	85%
Eugene W. Baldino	1%
Kenneth A. Marvald	1%
Douglas J. Summers	1%
Susan L. Conrado	4%
Kenneth R. Holland	4%
Andrew W. Holland	4%

Manager

John M. Summers

**KENNETH CROSBY LLC**

Members

Estate of Jayne C. Summers	49.5%
Susan Conrado	47.5%
Eugene W. Baldino	1%
Kenneth A. Marvald	1%
Douglas J. Summers	1%

Manager

John M. Summers

**KENNETH CROSBY SOUTHERN TIER LLC (fka Kelley & Gierston Industrial Supply LLC)**

Members

Kenneth Crosby Western New York LLC (f/k/a Gierston Tool LLC)	37.00%
Estate of Jayne C. Summers	45.50%
John M. Summers	8.00%
AKK Brighton LLC (William Alibrandi)	8.00%
J. Summers Management LLC	1.50%

Manager

J. Summers Management, LLC  
John M. Summers

**KENNETH CROSBY WESTERN NEW YORK LLC (fka Gierston Tool, LLC)**

Members

Estate of Jayne C. Summers	59%
Lawrence T. Diggs	20%
Richard J. Maxa	20%
J. Summers Management, LLC	1%

Manager

J. Summers Management, LLC  
John M. Summers

## EXHIBIT I

### Closing Agreement

THIS CLOSING AGREEMENT is made and entered into effective the \_\_\_ day of October, 2011 (“the Effective Date”), by and among those certain members which are listed in the signature pages to this Closing Agreement (the (“Members”) of each of KENNETH CROSBY, LLC, KENNETH CROSBY NEW YORK, LLC, KENNETH CROSBY SOUTHERN TIER, LLC, and KENNETH CROSBY WESTERN NEW YORK, LLC (collectively “the Companies”), each a New York limited liability company and DXP ENTERPRISES, INC., a Texas corporation (the “Buyer”).

### WITNESSETH:

WHEREAS, in order to induce Buyer to enter into the Asset Purchase Agreement (the “Agreement”), dated as of October \_\_\_\_, 2011, between Buyer and the Companies (also referred to herein as “Seller”), the Members have agreed, subject to the terms and conditions contained in this Closing Agreement, to (i) provide a limited guarantee pro rata based on each Member’s respective membership interest in each of the Companies, with the exception of the Estate of Jayne C. Summers (the “Estate”), which Estate shall guarantee not only the Estate’s pro-rata share, but also the percentage interest of any of the members of the Companies not listed in the signature pages to this Closing Agreement, the payment and performance of the Members Obligations (as such term is defined in Section 4.3 of this Closing Agreement) (whether or not the Companies at any time in question then exists), shall occur on the earliest of the Escrow Agreement has terminated by its own terms or there are no funds available in the Escrow Agreement to pay the Members’ Obligations, (ii) to agree to the covenants and conditions set out in Article 1, and (iii) to execute and deliver this Closing Agreement;

WHEREAS, the Members will benefit directly or indirectly from the consummation of the transactions contemplated by this Closing Agreement; and

WHEREAS, the Members and the Buyer desire to set forth certain representations, warranties, covenants and agreements, all as more fully set forth below;

WHEREAS, each capitalized term defined in the Agreement and not otherwise defined herein shall have the meaning ascribed thereto in the Agreement when used herein.

NOW, THEREFORE, in consideration of the foregoing and premises and the mutual covenants and agreements contained herein, the parties hereto intending to be legally bound hereby agree as follows:

### ARTICLE 1 NON-DISCLOSURE, NON-COMPETITION AND NON-SOLICITATION

#### 1.1. Members Acknowledgement

. The Members acknowledge that the covenants contained in Sections 1.2 and 1.3 hereof are a material element of this Closing Agreement and that Buyer would not have entered into this Agreement or purchased the Business or the Transferred Assets or assumed the Assumed Liabilities of the Companies without the Members’ agreement to honor the provisions of Sections 1.2 and 1.3.

#### 1.2 Covenants of Nondisclosure of Proprietary Information

. The Members covenant and agree that, from and after the Effective Date, the Members shall hold in confidence and will not directly or indirectly at any time reveal, report, publish, disclose or transfer to any Person other than the Buyer any of the Proprietary Information that is not generally known to the public or utilize any of the Proprietary Information for any purpose. Notwithstanding the foregoing, the Members may disclose information that is (i) required to be disclosed by applicable state or federal tax or securities laws to the extent, and only to the extent, such laws require such disclosure and, to the extent practicable, the Members provide to the Buyer prior written notice of the Members intent to provide such disclosure and the general text of such disclosure, and (ii) required to be disclosed by final order of a court of competent jurisdiction; provided that, in the event the Members are served or threatened with litigation that would require the Members to disclose such information, the Members shall tender to the Buyer the opportunity to defend, at its cost, against such disclosure.

Because of the unique nature of the Proprietary Information, if any, the Members understand and agree that the breach or anticipated breach of their obligations under this Section 1.2 will result in immediate and irreparable harm and injury to the Buyer, for which it will not have an adequate remedy at law, and that the Buyer and its successors and assigns shall be entitled to an injunction, restraining order or other equitable relief to enjoin such breach or anticipated breach and to seek any and all other legal and equitable remedies to which they may be entitled. The Members acknowledge that this covenant regarding Proprietary Information is being provided as an inducement to the Buyer to acquire the Business and Transferred Assets. The parties agree that if any court of competent jurisdiction determines that any relevant feature of this Section 1.2 is determined to be unreasonable, arbitrary or against public policy then such relevant feature which is determined by the court to be reasonable, not arbitrary and not against public policy may be enforced against the applicable party.

#### 1.3 Non-Compete and Non-Solicitation

. The Members covenant and agree that, effective as of the Closing Date and for a period of five (5) years thereafter, the Members shall not, without the prior written consent of the Buyer, directly or indirectly, (i) compete with the Business in any county in which the Companies have

physical operations or in any counties contiguous to such county, (ii) make any contact with, for the purpose of transacting any business competitive to the Business, with any Person which was a customer of the Companies at any time in the five (5) years prior to the Effective Date (“Companies’ Customers”), (iii) attempt to direct or take away the business or patronage of any of the Companies’ Customers or suppliers related to the Business, (iv) attempt to have any dealings with the Companies’ Customers or suppliers for the purpose of attempting to secure such customers or suppliers or their patronage in competition with the Business, (v) solicit, hire away or attempt to solicit or hire away to any firm or entity engaged in the Business, any person presently employed by the Companies, (vi) engage in the Business in any county in which the Companies have physical operations or in any counties contiguous to such county, (vii) interfere with or molest the business, trade, goodwill, suppliers or customers of the Companies regarding the Business, (viii) directly or indirectly, own, invest in, manage, operate, control, be employed by, consult with or be an agent for, engage or participate in the ownership, management, operation, control or any other engagement of, any business, whether in corporate, proprietorship or partnership form or any other business form, engage in the business of Industrial Distribution and Integrated Supply in any county in which the Companies have physical operations or in any counties contiguous to such county, or (ix) use for the Members’ own benefit or the benefit of another or disclose, disseminate, or distribute to another, any trade secrets of the Business. The Members acknowledge that a remedy at law for any breach or attempted breach of this Section 1.3 will be inadequate and it further agrees that any breach of this Section 1.3 will result in irreparable harm to the Business and to the Buyer and in addition to any other remedy that may be available to Buyer, Buyer shall be entitled to specific performance and injunctive and other equitable relief in case of any such breach or attempted breach. The Members acknowledge that the covenant not to compete is being provided as an inducement to the Buyer to acquire the Business and the Transferred Assets and that this Section 1.3 contains reasonable limitations as to time, geographical area and scope of activity to be restrained that do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the Buyer. Whenever possible, each provision of this Section 1.3 shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Section 1.3 shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Section 1.3. If any provision of this Section 1.3 shall, for any reason, be judged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Section 1.3 but shall be confined in its operation to the provision of this Section 1.3 directly involved in the controversy in which such judgment shall have been rendered. In the event that the provisions of this Section 1.3 should ever be deemed to exceed the time or geographic limitations permitted by applicable laws, then such provision shall be reformed to the maximum time or geographic limitations permitted by applicable law.

Notwithstanding anything to the contrary contained in this Section 1.3, the limitations contained in this Section 1.3, including specifically the limitations contained in Section 1.3 (i)-(ix) shall have no effect whatsoever upon the Members, directly or indirectly, to own, invest in, manage, operate, control, be employed by, consult with, be an agent for, engage or participate in the ownership, management, operation, control or any other engagement of, any business, whether in corporate, limited liability company, proprietorship, or partnership form, or any other business form, to engage in any activity directly related to the Jasco Business..

## ARTICLE 2 MEMBERS LIMITED GUARANTY

2.1 The Members fully and irrevocably guarantee pro rata based on each Member’s respective membership interest in each of the Companies, with the exception of the Estate, which shall guarantee not only the Estate’s pro-rata share, but also the percentage interest of any of the members of the Companies not listed in the signature pages to this Closing Agreement, the payment and performance of the Members Obligations when due. This guarantee shall be a full, unconditional, irrevocable, absolute and continuing guarantee of payment and performance and not a guarantee of collection, and the Members shall remain liable for the Members Obligations hereunder until the payment in full of the Members Obligations, subject to the limitation contained in Section 2.7 of this Closing Agreement.

2.2 Except as provided in Section 2.6 below, the Members’ guaranty and their responsibility shall not be discharged, released, diminished, or impaired in whole or in part by any setoff, counterclaim, defense, act or occurrence which the Members may have against Buyer as a result of or arising out of the Agreement.

2.3 The Members Obligations shall not be released, discharged, diminished or impaired by (i) the modification or alteration by Buyer and Seller, with or without the knowledge or consent of the Members, of the Agreement or of any liability or obligation of Seller thereunder or of any document or instrument under which the Members Obligations arise, (ii) any forbearance or compromise granted to Seller by Buyer when dealing with Seller except to the extent of such forbearance or compromise, (iii) any change in corporate structure or ownership of Seller or the bankruptcy, insolvency, liquidation, receivership, dissolution, winding-up or termination of Seller or the fact that at any time Seller does not exist, (iv) the inaccuracy of any of the representations and warranties of Seller under the Agreement, (v) any neglect, delay, omission, failure or refusal of Seller to take or prosecute any action in connection with the Agreement, (vi) the full or partial release of Seller on any liability or obligation, except that the Members shall be released *pro tanto* to the extent Buyer expressly releases Seller from liability with respect to the Members Obligations, or (vii) any other circumstance relating to the Members Obligations that might otherwise constitute a legal or equitable discharge of or defense to the Members not available to Seller who is liable for such Members Obligations.

2.4 Intentionally Omitted.

2.5 The Members shall promptly pay such Members Obligations in lawful money of the United States within fifteen (15) business days of receipt of demand for payment from Buyer. Buyer may enforce the Members Obligations under this Closing Agreement without first suing Seller or joining Seller in any suit against the Members, or enforcing any rights and remedies against Seller, or otherwise pursuing or asserting any claims or rights against Seller or any other person or entity or any of its or their property which may also be liable with respect to the matters for which the Members are liable under this Section 2.

2.6 The Members reserve the right to assert defenses which Seller may have to payment or performance of any Members

Obligations, other than defenses that Seller may possess relating to (i) lack of validity or enforceability of the Agreement or arising from Seller's defective incorporation or lack of qualification to do business in any applicable jurisdiction, (ii) Seller's lack of corporate authority to enter into or perform the Agreement or the due execution and delivery thereof, or (iii) the termination of existence, dissolution, liquidation, insolvency, bankruptcy, receivership, or other reorganization of Seller.

2.7 Limitation of Guarantee. Notwithstanding anything to the contrary contained in this Closing Agreement, each of the Member's aggregate obligations to pay the Members' Obligations shall be capped and shall in no event ever exceed the amount of each Member's aggregate distribution from the Companies in connection with the consummation of the Agreement, with the exception of the Estate, which aggregate obligations to pay the Members' Obligations shall also be capped and shall in no event ever exceed: (i) the amount of the aggregate distribution to the Estate from the Companies in connection with the consummation of the Agreement plus (ii) the amount of the aggregate distribution to the members of the Companies not listed in the signature pages to this Closing Agreement from the Companies.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE MEMBERS

3.1 Representations and Warranties of the Members. The Members hereby represent and warrant to Buyer as follows:

(a) Authority Relative to this Closing Agreement. The Members have full power and authority to execute and deliver this Closing Agreement and to consummate the transactions contemplated hereby. This Closing Agreement has been duly and validly executed and delivered by the Members, and this Closing Agreement constitutes a valid and binding agreement of the Members, enforceable against the Members in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

(b) Consents and Approvals; No Violation. Neither the execution and delivery by the Members of this Closing Agreement nor the performance of its obligations under this Closing Agreement do or will (i) conflict with or result in any breach of any provision of the articles of organization or operating agreements (or other similar governing documents) of the Members, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except where it is reasonably expected that the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not prevent or delay in any material respect such performance, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any agreement or other instrument or obligation to which the Members are a party or by which the Members or any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or will be obtained prior to the Closing Date, or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Members, or any of their assets.

(c) Litigation; Claims. There is no claim, action, proceeding or investigation pending or, to the knowledge of the Members, threatened against the Members before any court or governmental or regulatory authority or body that would prevent or delay in any material respect the performance by the Members of the guarantee contemplated hereby. The Members are not subject to any judgment or outstanding order, writ, injunction or decree that would have a material adverse effect on its ability to perform their obligations under this Closing Agreement and that would prevent or delay in any material respect the performance by the Members of this Closing Agreement.

### ARTICLE 4 MISCELLANEOUS

4.1 Notices

. All notices, requests, consents, directions and other instruments and communications required or permitted to be given under this Closing Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by courier, by overnight delivery service with proof of delivery or by prepaid registered or certified United States first-class mail, return receipt requested, addressed to the respective party at the address set forth below, or if sent by facsimile or other similar form of communication (with receipt confirmed) to the respective party at the facsimile number set forth below:

If to the Members, to:

Eugene W. Baldino, CEO

Jasco Family of Companies  
1390 Mt. Read Blvd.  
Rochester, New York 14606

(V) (585) 254-7000

(F) (585) 254-2655

Copies to: Kenneth A. Marvald  
Vice President & General Counsel  
Jasco Family of Companies  
1001 Lexington  
Rochester, New York 14606

(V) (585) 546-6844

(F) (585) 546-8107

If to the Buyer, to:

DXP Enterprises, Inc.  
7272 Pinemont  
Houston, Texas 77040  
Attn: David R. Little, CEO  
(V) (713) 996-4755  
(F) (713) 996-6570

Copies to:

Gary A. Messersmith

Looper, Reed & McGraw, P.C.  
1300 Post Oak Blvd., Suite 2000  
Houston, Texas 77056  
(V) (713) 986-7216  
(F) (713) 986-7100

or to such other address or facsimile number and to the attention of such other Person(s) as either party may designate by written notice. Any notice mailed shall be deemed to have been given and received on the third Business Day following the day of mailing.

#### 4.2 Binding Effect and Assignment

. This Closing Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No party to this Closing Agreement may sell, transfer, assign, pledge or hypothecate its rights, interests or obligations under this Closing Agreement without the prior written consent of the other parties, except that the Buyer may assign its rights to any Affiliate of the Buyer.

4.3 “Members’ Obligations” shall mean: (i) any liability arising out of, resulting from or relating to the intentional acts of fraud (excluding constructive knowledge, gross negligence or recklessness) of the Seller and any claims related to the Retained Liabilities pursuant to the Agreement and (ii) any liability in respect of indemnification under the following Sections of the Agreement: Sections 3.01, 3.02(a), 3.07, 3.10, 3.14 and 3.18, the first sentence of Sections 3.04(b), 3.04(d) and 3.04(e), and the second sentence of Sections 3.04(b), PROVIDED FURTHER HOWEVER, the Members’ Obligations above are subject to: (x) the limitations of time contained in Article XI of the Agreement and (y) shall only be payable in the event the Escrow Agreement has terminated by its own terms or there are no funds available in the Escrow Agreement other than funds retained by Escrow Agent for Unresolved Claims.

4.4 Successors. This Closing Agreement shall inure to the benefit of, be binding upon and be enforceable by the parties hereto and their respective successors and assigns.

4.5 Entire Agreement. This Closing Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof and thereof and supersedes all prior representations, endorsements, premises, agreements, memoranda communications, negotiations, discussions, understandings and arrangements, whether oral, written or inferred, between the parties relating to the subject matter hereof. This Closing Agreement may not be modified, amended, rescinded, canceled, altered or supplemented, in whole or in part, except upon the execution and delivery of a written instrument executed by a duly authorized representative of each of the parties hereto. No action taken pursuant to this Closing Agreement, including without limitation, any investigation by or behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant, or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Closing Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver or any other subsequent breach.

#### 4.6 Governing Law

. This Closing Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without giving effect to choice of law principles. The parties submit to the non-exclusive jurisdiction of the courts of the State of Texas or New York. Venue of any dispute arising out of this Closing Agreement shall be in Houston, Harris County, Texas or Rochester, Monroe County, New York.

#### 4.7 Waiver

. The waiver of any breach of any term or condition of this Closing Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

#### 4.8 Severability

. If any term or other provision of this Closing Agreement is invalid, illegal, incapable of being enforced by any law or public policy, prohibited or unenforceable all other terms or provisions of this Closing Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Closing Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

4.9 No Third Party Beneficiaries

. Any agreement contained, expressed or implied in this Closing Agreement shall be only for the benefit of the parties hereto and their respective legal representatives, successors and assigns, and such agreements shall not inure to the benefit of the obligees of any indebtedness of any party hereto, it being the intention of the parties hereto that no person shall be deemed a third party beneficiary of this Closing Agreement, except to the extent a third party is expressly given rights herein.

4.10 Counterparts

. This Closing Agreement may be executed in any number of counterparts, each of which shall be deemed an original copy of this Closing Agreement and all of which, when taken together shall constitute one and the same Agreement.

4.11 Prevailing Party

. In the event there is any legal action commenced to enforce or interpret this Closing Agreement, the prevailing party shall be entitled to collect all reasonable costs incurred from the other party, including but not limited to court costs, expert witness fees and attorneys' fees.

MEMBERS:

ESTATE OF JAYNE C. SUMMERS

By:

John M. Summers, Executor

EUGENE W. BALDINO

KENNETH A. MARVALD

SUSAN L. CONRADO

JOHN M. SUMMERS

J. SUMMERS MANAGEMENT LLC

By:

Name:

Title:

**ASSET PURCHASE AGREEMENT**

Between

**DXP ENTERPRISES, INC.  
PURCHASER**

And

**C.W. ROD TOOL COMPANY, INC.  
SELLER**

Dated as of December 30, 2011

862804.3

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Exhibits

- A Form of Lease (Section 5.9)
- B Form of Seller's Certificate (Section 9.1(d))
- C Form of Employment Agreement (Sections 8.4 and 9.1(g))
- D [Intentionally Omitted]
- E Form of Bill of Sale (Section 9.1(i))
- F Form of Assignment and Assumption Agreement (Sections 9.1(1) and 9.2(e))
- G Form of Seller's Disclosure Schedules Letter (Section 9.1(p))
- H Form of Escrow Agreement (Section 10.5)
- I Form of Minutes of shareholders and board of directors (Section 9.1(o))
- J Form of Lease Termination Agreement (Section 5.9(a))

862804.3

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “Agreement”) dated as of December 30, 2011, among DXP ENTERPRISES, INC., a Texas corporation (“Purchaser”), C.W. ROD TOOL COMPANY, INC., a Texas corporation (“Seller”), and CHARLES W. ROD and RONALD D. ROD (“Controlling Shareholders”).

WITNESSETH:

WHEREAS, Seller presently conducts the Business;

WHEREAS, Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to acquire and assume from Seller, all of the Purchased Assets and Assumed Liabilities, all as more specifically provided herein; and

WHEREAS, certain terms used in this Agreement are defined in Section 1.1;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

##### 1.1 Certain Definitions

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Business” means the current business of Seller, including but not limited to, distribution of state-of-the-art cutting tools, coolants, machine shop supplies and industrial machine parts and equipment.

“Business Day” means any day of the year on which national banking institutions in Houston, Texas are open to the public for conducting business and are not required or authorized to close.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any contract, agreement, indenture, note, bond, mortgage, loan, instrument, lease, license, commitment or other arrangement, understanding or undertaking, commitment or obligation, whether written or oral.

“Documents” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, lists of past, present and/or prospective customers, supplier lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to the Business and the Purchased Assets, in each case whether or not in electronic form.

“Employee” means all individuals (including common law employees, independent contractors and individual consultants), as of the date hereof, who are employed or engaged by Seller in connection with the Business together with individuals who are hired in respect of the Business after the date hereof.

“Environmental Costs and Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies, remedial, removal, response, abatement, clean-up, investigative and monitoring costs and any other related costs and expenses), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person or in response to any violation of Environmental Law, whether known or unknown, accrued or contingent, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, to the extent based upon, related to, or arising under or pursuant to any Environmental Law, Environmental Permit, order or agreement with any Governmental Body or other Person, which relates to any environmental, health or safety condition, violation of Environmental Law or a Release or threatened Release of

## Hazardous Materials.

“ **Environmental Law** ” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Asset Conservation, Lender Liability, and Deposit Insurance Act of 1996, 42 U.S.C. §9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S. C. §9601 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq.; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §11001 et seq.; the Clean Air Act of 1966, as amended 42 U.S.C. §7401 et seq.; the National Environmental Policy Act of 1975, 42 U.S.C. §4321 et seq.; the Rivers and Harbours Act of 1899, 33 U.S.C. §401 et seq.; the Endangered Species Act of 1973, as amended 16 U.S.C. §1531 et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §651 et seq.; and the Safe Drinking Water Act of 1974, as amended 42 U.S.C. §300(f) et seq.; and all rules, regulations and guidance promulgated or published thereunder, and any Laws relating to public health, safety or the environment, including, without limitation, those relating (i) to releases, discharges, emissions or disposals to air, water, land or ground water, (ii) to the use, handling or disposal of polychlorinated biphenyls (PCB’s), asbestos or urea formaldehyde, (iii) to the treatment, storage, disposal or management of Hazardous Substances (including, without limitation petroleum, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the real property of the Company, (iv) to the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances, (v) to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulations, order, injunction, judgment, declaration, notice or demand issued thereunder.

“ **Environmental Permit** ” means any Permit required by Environmental Laws for the operation of the Business.

“ **ERISA** ” means the Employment Retirement Income Security Act of 1974, as amended.

“ **Former Employee** ” means all individuals (including common law employees, independent contractors and individual consultants) who were employed or engaged by Seller in connection with the Business but who are no longer so employed or engaged on the date hereof.

“ **Furniture and Equipment** ” means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned or used by Seller in the conduct of the Business, including all artwork, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

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

“ **Governmental Body** ” means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“ **Hardware** ” means any and all computer and computer-related hardware, including, but not limited to, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

“ **Hazardous Material** ” means any substance, material or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as “hazardous,” “toxic,” “pollutant,” “contaminant,” “radioactive,” or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold or other fungi and urea formaldehyde insulation.

“ **Indebtedness** ” of any Person means, without duplication, (i) the principal, accreted value, accrued and unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business) (other than the current liability portion of any indebtedness for borrowed money); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof); (vi) the liquidation value, accrued and unpaid dividends and prepayment or redemption premiums and penalties (if any), unpaid fees or expense and other monetary obligations in respect of any and all redeemable preferred stock of such Person; (vii) all obligations of the type referred to in clauses (i) through (vi) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (viii) all obligations of the type referred to in clauses (i) through (vii) of other Persons secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“ **Intellectual Property** ” means all right, title and interest in or relating to intellectual property, whether protected, created or arising under the laws of the United States or any other jurisdiction, including: (i) all patents and applications therefor, including all continuations, divisionals, and continuations-in-part thereof and patents issuing thereon, along with all reissues, reexaminations and extensions thereof (collectively, “ **Patents** ”); (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles, logos and other source or business identifiers and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, along with all applications, registrations, renewals and extensions thereof (collectively, “ **Marks** ”); (iii) all Internet domain names; (iv) all copyrights and all mask work, database and design rights, whether or not registered or published, all registrations

and recordations thereof and all applications in connection therewith, along with all reversions, extensions and renewals thereof (collectively, “**Copyrights**”); (iv) trade secrets (“**Trade Secrets**”); (v) all other intellectual property rights arising from or relating to Technology, and (vi) all Contracts granting any right relating to or under the foregoing.

“**Intellectual Property Licenses**” means (i) any grant by the Seller to another Person of any right relating to or under the Purchased Intellectual Property and (ii) any grant by another Person to Seller of any right relating to or under any third Person’s Intellectual Property.

“**IRS**” means the United States Internal Revenue Service and, to the extent relevant, the United States Department of Treasury.

“**Knowledge of Seller**” means the knowledge, after due inquiry, of the officers and directors of Seller.

“**Law**” means any foreign, federal, state or local law (including common law), statute, code, ordinance, rule, regulation, Order or other requirement.

“**Legal Proceeding**” means any judicial, administrative or arbitral actions, suits, mediations, investigations, inquiries, proceedings or claims (including counterclaims) by or before a Governmental Body.

“**Liability**” means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation).

“**Lien**” means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever other than landlord liens under any real estate lease agreements.

“**Material Adverse Effect**” means a material adverse effect on (i) the historical or near-term or long-term projected business, assets, properties, results of operations, condition (financial or otherwise) or prospects of Seller or of the Business; or (ii) the financial, banking or capital markets or general economic conditions; or (iii) regulatory or political conditions, or securities markets in the United States of America or worldwide or any outbreak of hostilities, terrorists activities or war, or any material worsening of any such hostilities, activities or war underway as of the date hereof; or (iv) the value of the Purchased Assets or an increase in the amount of Assumed Liabilities; or (v) the ability of Seller to consummate the transactions contemplated by this Agreement or perform its obligations under this Agreement or the Seller Documents.

“**Order**” means any order, injunction, judgment, doctrine, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“**Ordinary Course of Business**” means the ordinary and usual course of normal day-to-day operations of the Business, as conducted by Seller, through the date hereof consistent with past practice.

“**Permits**” means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

“**Person**” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“**Purchased Contracts**” means all of Seller’s Contracts related to the Business.

“**Purchased Intellectual Property**” means all Intellectual Property owned by Seller related to or used in connection with the Business.

“**Purchased Technology**” means all Technology owned by Seller related to or used in connection with the Business.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, deposit, dumping, emptying, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, or into or out of any property.

“**Remedial Action**” means all actions including any capital expenditures undertaken to (i) clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

“**Software**” means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code; (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise; (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons; and (iv) all documentation, including user manuals and other training documentation related to any of the foregoing.

“ **Tax** ” or “ **Taxes** ” means (i) any and all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever; (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Taxing Authority in connection with any item described in clause (i); and (iii) any liability in respect of any items described in clauses (i) and/or (ii) payable by reason of Contract, assumption, transferee liability, operation of law, Treasury Regulations or otherwise.

“ **Taxing Authority** ” means the IRS and any other Governmental Body responsible for the administration of any Tax.

“ **Tax Return** ” means any return, report or statement required to be filed with respect to any Tax (including any elections, declarations, schedules or attachments thereto, and any amendment thereof), including any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes Seller or any of their Affiliates.

“ **Technology** ” means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, data bases, complications, descriptions, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

## 1.2 Terms Defined Elsewhere in this Agreement

. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

Term	Section
Accountant	3.3(c)
Accounting Principles	3.3(a)
Agreement	Introductory Paragraph
Asset Acquisition Statement	2.7
Assumed Liabilities	2.3
Balance Sheet	5.4
Balance Sheet Date	5.4
Basket	10.4(a)
Cap	10.4(b)
Closing	4.1
Closing Date	4.1
Closing Statement	3.3(a)
Closing Working Capital	3.3(a)
Confidential Information	7.5(c)
Confidentiality Agreement	7.1
Controlling Shareholders	Introductory Paragraph
Copyrights	1.1 (in Intellectual Property definition)
Employee Benefit Plans	5.13(a)
ERISA Affiliate	5.13(a)
ERISA Affiliate Plans	5.13(a)
Escrow Agent	10.5
Escrow Agreement	10.5
Excluded Assets	2.2
Excluded Employee	8.1(b)
Excluded Liabilities	2.4
Final Working Capital	3.3(e)
Financial Statements	5.4(a)
Indemnity Escrow Amount	10.5
Loss and Losses	10.2(a)
Marks	1.1 (in Intellectual Property definition)
Material Contracts	5.12
Monthly Financial Statements	7.11
Multiemployer Plans	5.13(a)
Multiple Employer Plans	5.13(a)
Net Working Capital	3.3(a)
Nonassignable Assets	2.5(c)
Patents	1.1 (in Intellectual Property definition)
PBGC	5.13(e)
Personal Property Leases	5.10(b)
Purchase Price	3.1
Purchased Assets	2.1

Purchaser	Introductory Paragraph
Purchaser Documents	6.2
Purchaser's Environmental Assessments	
	7.10(a)
Purchaser Indemnified Parties	10.2(a)
Purchaser Plans	8.3(a)
Qualified Plans	5.13(c)
Real Property Leases	5.9(a)
Reference Date	3.3(a)
Reference Statement	3.3(a)
Related Persons	5.21
Representatives	7.5(a)
Restricted Business	7.6(a)
Revised Statements	2.7
Seller	Introductory Paragraph
Seller Documents	5.2
Seller Indemnified Parties	10.2(b)
Seller Marks	7.9
Seller Permits	5.16(b)
Seller Property	5.9(a)
Seller Properties	5.9(a)
Survival Period	10.1
Termination Date	4.2(a)
Third Party Claim	10.3(b)
Total Consideration	3.1
Trade Secrets	1.1 (in Intellectual Property definition)
Transfer Taxes	11.1
Transferred Employees	8.1(a)
Unresolved Claims	10.5

### 1.3 Other Definitional and Interpretive Matters

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which, any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. The Exhibits and the Schedules (which are attached to Seller's Disclosure Schedules Letter) to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and all Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "**including**" or any variation thereof means (unless the context of its usage requires otherwise) "including, but not limited to," and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

## ARTICLE II

## PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

### 2.1 Purchase and Sale of Assets

. On the terms and subject to the conditions set forth in this Agreement, at the Closing Purchaser shall purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Purchaser all of Seller's right, title and interest in, to and under the Purchased Assets, free and clear of all Liens. "**Purchased Assets**" shall mean all of the business, assets, properties, contractual rights, goodwill, going concern value, rights and claims of Seller related to the Business, wherever situated and of whatever kind and nature, real or personal, tangible or intangible, whether or not reflected on the books and records of Seller (other than the Excluded Assets), including each of the following assets:

- (a) all accounts receivable of Seller including, but not limited to, those set forth on Schedule 2.1(a);
- (b) all inventory used or intended to be used primarily in connection with or useful in the Business including, but not limited to, those set forth on Schedule 2.1(b);
- (c) all tangible personal property intended to be used primarily in connection with or useful in the Business, including, but not limited to, Furniture and Equipment (the vehicles shall be listed on Schedule 2.01(c)), other than such tangible personal property which is an Excluded Asset;
- (d) all deposits (including customer deposits and security for rent, electricity, telephone or otherwise) and prepaid charges and expenses, including any prepaid rent, of Seller to the extent included in Net Working Capital;
- (e) all rights of Seller under each Real Property Lease set forth on Schedule 5.9(a), together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof;
- (f) the Purchased Intellectual Property and the Purchased Technology;
- (g) all rights of Seller under the Purchased Contracts including all claims or causes of action with respect to the Purchased Contracts;
- (h) all Documents that are related to the Business as to which Seller has possession, including Documents relating to products, services, marketing, advertising, promotional materials, Purchased Intellectual Property, personnel files for Transferred Employees and all files, customer files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any of the premises referred to in clause (e) above, but excluding personnel files for Employees of Seller who are not Transferred Employees;
- (i) all assets of any trust attributable to Employees in connection with any Employee Benefit Plan to the extent of Seller's interest thereon;
- (j) all Permits, to the extent transferable, including Environmental Permits, used by Seller in the Business (which includes all Permits necessary to conduct the Business as currently conducted) which are set forth on Schedule 2.1(j) and all rights, and incidents of interest therein;
- (k) all supplies owned by Seller and used in connection with the Business;
- (l) Seller does not have any non-disclosure or confidentiality or non-compete or non-solicitation agreements with Former Employees, Employees of Seller or with third parties, except for agreements which Seller has not and will not enforce.
- (m) all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold or services provided to Seller or to the extent affecting any Purchased Assets to the extent transferable;
- (n) all third-party property and casualty insurance proceeds, and all rights to third-party property and casualty insurance proceeds, in each case to the extent received or receivable in respect of the Business; and
- (o) all goodwill and other intangible assets associated with the Business, including the goodwill associated with the Purchased Intellectual Property.

### 2.2 Excluded Assets

. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. "**Excluded Assets**" shall mean each of the following assets:

- (a) all minute books, organizational documents, stock registers and such other books and records of Seller as pertain to ownership, organization or existence of Seller and duplicate copies of such records as are necessary to enable Seller to file tax returns and

reports;

- (b) any individual life insurance policies insuring the life of any key employee or the Controlling Shareholder;
- (c) the assets set out in Schedule 2.2(c);
- (d) the rights to the Purchase Price;

(e) any inventory item not included (other than dead stock based on past practice) or credited to Seller for purposes of determining Net Working Capital shall be deemed retained by Seller and consigned to Purchaser, upon terms and conditions usual and customary in the distribution industry in Harris County, Texas (“**Consigned Item**” or “**Consigned Items**”). Such Consigned Items shall be listed on a schedule Seller shall prepare and deliver to Purchaser on or before thirty (30) days after the Closing. Such schedule shall list each Consigned Item, the cost of such Consigned Item (at the lower of actual cost, last cost or current market cost (“the **Cost**”)) and the branch location of each Consigned Item. In the event any of Seller’s prior customers or any other C.W. Rod branch customer order a Consigned Item, then such Consigned Item shall be sold to such customer rather than the same inventory item that is not a Consigned Item. Upon such sale, Purchaser shall pay Seller the amount shown on such schedule for such Consigned Item on Purchaser’s next vendor check run after the month of such sale. Purchaser shall be liable for any loss due to theft or casualty as to the Cost of such Consigned Item. Seller shall have the right to audit Purchaser’s books and records as to the sale of Consigned Items. Seller itself may at anytime eighteen (18) months after the Closing Date sell such Consigned Items and Purchaser shall have the right any time after eighteen (18) months from the Closing Date to deliver the Consigned Items to Seller; and

(f) any accounts receivable not included or a credited to Seller for purposes of determining Net Working Capital shall be deemed retained by Seller: provided however Purchaser shall provide reasonable assistance to Seller in collecting same and shall remit the amounts collected within thirty (30) days of collection.

### 2.3 Assumption of Liabilities

. On the terms and subject to the conditions set forth in this Agreement, at the Closing Purchaser shall assume, effective as of the Closing, the following liabilities of Seller (collectively, the “**Assumed Liabilities**”):

- (a) all Liabilities of Seller under the Purchased Contracts that arise out of or relate to the period from and after the Closing Date;
- (b) the liabilities specifically set out in Schedule 2.3(b); and
- (c) any other liabilities included in the Net Working Capital.

### 2.4 Excluded Liabilities

. Purchaser will not assume or be liable for any Excluded Liabilities. Seller shall timely perform, satisfy and discharge in accordance with their respective terms all Excluded Liabilities. “**Excluded Liabilities**” shall mean all Liabilities of Seller arising out of, relating to or otherwise in respect of the Business on or before the Closing Date and all other Liabilities of Seller, other than the Assumed Liabilities, including the following Liabilities:

- (a) all Liabilities in respect of any products sold and/or services performed by Seller on or before the Closing Date except to the extent the same are included in Net Working Capital;
- (b) all Environmental Costs and Liabilities, to the extent arising out of or otherwise related to (i) the ownership or operation by Seller of (A) Real Property Leases (or any condition thereon) on or prior to the Closing Date (including (i) the Release or continuing Release (if existing as of the Closing) of any Hazardous Material, regardless of by whom or (ii) any noncompliance with Environmental Laws), (B) the Business on or prior to the Closing Date, (C) the Excluded Assets or any other real property formerly owned, operated, leased or otherwise used by Seller or (ii) from the offsite transportation, storage disposal, treatment or recycling of Hazardous Material generated by and taken offsite by or on behalf of Seller prior to and through the Closing Date;
- (c) except to the extent specifically provided in Article VIII, all Liabilities arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by Seller or any of its Affiliates of any individual on or before the Closing Date, (ii) workers’ compensation claims against Seller (other than those that are covered by a policy of insurance) that relate to the period on or before the Closing Date, irrespective of whether such claims are made prior to or after the Closing, (iii) any Employee Benefit Plan or (iv) life insurance policy premiums for specific key employees;
- (d) all Liabilities arising out of, under or in connection with Contracts that are not Purchased Contracts and, with respect to Purchased Contracts, Liabilities in respect of a breach by or default of Seller accruing under such Contracts with respect to any period prior to Closing (Seller will retain the right to an offset as to same under said Contract or right due to applicable law);
- (e) all Liabilities arising out of, under or in connection with any Indebtedness of Seller;
- (f) all Liabilities for (i) Transfer Taxes other than Louisiana transfer taxes or sales/transfer taxes related to the transfer of any vehicle (which shall be the responsibility of Purchaser), (ii) Taxes of Seller, (iii) Taxes that relate to the Purchased Assets or the Assumed

Liabilities for taxable periods (or portions thereof) ending on or before the Closing Date, including, without limitation, Taxes allocable to Seller pursuant to Section 11.2, and (iv) payments under any Tax allocation, sharing or similar agreement (whether oral or written);

(g) all Liabilities in respect of any pending or threatened Legal Proceeding, or any claim arising out of, relating to or otherwise in respect of (i) the operation of the Business to the extent such Legal Proceeding or claim relates to such operation on or prior to the Closing Date, or (ii) any Excluded Asset;

(h) all Liabilities relating to any dispute with any client or customer of the Business existing as of the Closing Date or based upon, relating to or arising out of events, actions, or failures to act prior to the Closing Date; and

(i) the Liabilities set out in Schedule 2.4(i).

## 2.5 Further Conveyances and Assumptions; Consent of Third Parties

(a) From time to time following the Closing and except as prohibited by Law, Seller shall, or shall cause its Affiliates to, make available to Purchaser such data in personnel records of Transferred Employees as is reasonably necessary for Purchaser to transition such Employees into Purchaser's records.

(b) From time to time following the Closing, Seller, the Controlling Shareholders and Purchaser shall, and shall use their reasonable commercial efforts to cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Seller Documents and to assure fully to Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement and the Seller Agreements, and to otherwise make effective the transactions contemplated hereby and thereby.

(c) Nothing in this Agreement nor the consummation of the transactions contemplated hereby shall be construed as an attempt or agreement to assign any Purchased Asset, including any Contract, Permit, certificate, approval, authorization or other right, which by its terms or by Law is nonassignable without the consent of a third party or a Governmental Body or is cancelable by a third party in the event of an assignment ("**Nonassignable Assets**") unless and until such consent shall have been obtained. Seller shall, and shall cause its Affiliates to, use its reasonable commercial efforts to cooperate with Purchaser at its request in endeavoring to obtain such consents promptly. To the extent permitted by applicable Law and not prohibited by a Contract, in the event consents to the assignment thereof cannot be obtained, such Nonassignable Assets shall be held, as of and from the Closing Date, by Seller or the applicable Affiliate of Seller in trust for Purchaser and the covenants and obligations thereunder shall be performed by Purchaser in Seller's or such Affiliate's name and all benefits and obligations existing thereunder shall be for Purchaser's account. Seller shall take or cause to be taken at Seller's expense such actions in its name or otherwise as Purchaser may reasonably request so as to provide Purchaser with the benefits of the Nonassignable Assets and to effect collection of money or other consideration that becomes due and payable under the Nonassignable Assets, and Seller or the applicable Affiliate of Seller shall promptly pay over to Purchaser all money or other consideration received by it in respect of all Nonassignable Assets. As of and from the Closing Date, Seller on behalf of itself and its Affiliates authorizes Purchaser, to the extent permitted by applicable Law and the terms of the Nonassignable Assets, at Purchaser's expense, to perform all the obligations and receive all the benefits of Seller or its Affiliates under the Nonassignable Assets and appoints Purchaser its attorney-in-fact to act in its name on its behalf or in the name of the applicable Affiliate of Seller and on such Affiliate's behalf with respect thereto.

## 2.6 Bulk-Sales Laws

Purchaser hereby waives compliance by Seller with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Purchaser; provided, however, that the Seller agrees (i) to pay and discharge when due or to contest or litigate all claims of creditors which are asserted against Purchaser or the Purchased Assets by reason of such noncompliance, (ii) to indemnify, defend and hold harmless Purchaser from and against any and all such claims in the manner provided in Article X and (iii) to take promptly all necessary action to remove any Lien which is placed on the Purchased Assets by reason of such noncompliance.

## 2.7 Purchase Price Allocation

Not later than sixty (60) days after the Closing Date, Purchaser and Seller shall mutually prepare a copy of Form 8594 and any required exhibits thereto (the "**Asset Acquisition Statement**") allocating the Total Consideration among the Purchased Assets. In the event Purchaser and Seller cannot agree on the allocation, the Accountant (defined in Section 3.3(c)) shall determine the allocation within thirty (30) days after the expiration of said sixty (60) day period. Purchaser and Seller shall prepare and deliver to Seller from time to time revised copies of the Asset Acquisition Statement (the "**Revised Statements**") so as to report any matters on the Asset Acquisition Statement that need updating (including purchase price adjustments, if any). The Total Consideration paid by Purchaser for the Purchased Assets shall be allocated in accordance with the Asset Acquisition Statement or, if applicable, the last Revised Statements, provided by Purchaser to Seller, and all income Tax Returns and reports filed by Purchaser and Seller shall be prepared consistently with such allocation. For purposes of this Section 2.7, the Purchased Assets include the covenant not to compete as set forth in Section 7.6. Purchaser and Seller agree the allocation to Non-Competition, Non-Solicitation, Confidentiality, as set out in Section 7.5, shall be \$50,000 unless otherwise agreed to by Purchaser and Seller. In the event Purchaser were to seek damages for any breach of this Agreement, the allocation of the Total Consideration, as set out herein, shall not be considered a measure of or a limit on such damages. Attached hereto as Schedule 2.7 is an example of the methodology for the allocation of the Purchase Price based on Seller's balance sheet as of June 30, 2011.



## 2.8 Right to Control Payment

. Purchaser shall have the right, but not the obligation, to make any payment due from Seller with respect to any Excluded Liabilities in excess of \$10,000 which are not paid by Seller within sixty (60) days following written request for payment from Purchaser; provided, however, that if Seller advises Purchaser in writing during such sixty (60) day period that a good faith payment dispute exists or Seller has valid defenses to non-payment with respect to such Excluded Liability, then Purchaser shall not have the right to pay such Excluded Liability, as long as Seller continues to assert a good faith dispute and to pursue such dispute based on such valid defenses. Seller agrees to reimburse Purchaser promptly and in any event within five (5) Business Days following written notice of such payment by Purchaser for the amount of any payment made by Purchaser pursuant to this Section 2.8.

## 2.9 Proration of Certain Expenses

. Subject to Section 11.2 with respect to Taxes, all expenses and other payments in respect of all rents and other payments (including any prepaid amounts) due under the Real Property Leases and any other leases constituting part of the Purchased Assets shall be prorated between Seller, on the one hand, and Purchaser, on the other hand, as of the Closing Date. Seller shall be responsible for all rents (including any percentage rent, additional rent and any accrued tax and operating expense reimbursements and escalations), charges and other payments of any kind accruing during any period under the Real Property Leases or any such other leases up to and including the Closing Date. Purchaser shall be responsible for all such rents, charges and other payments accruing during any period under the Real Property Leases or any such other leases after the Closing Date. Purchaser shall pay the full amount of any invoices received by it and shall submit a request for reimbursement to Seller for Seller's share of such expenses and Seller shall pay the full amount of any invoices received by it and Purchaser shall reimburse Seller for Purchaser's share of such expenses.

## 2.10 Receivables

. Seller shall provide reasonable assistance to Purchaser in the collection of accounts receivable, provided same is without any out-of-pocket expense to Seller. If Seller shall receive payment in respect of accounts receivable that are included in the Purchased Assets, then Seller shall forward such payment to Purchaser within ten (10) days after receipt of such payment.

# ARTICLE III

## CONSIDERATION

### 3.1 Consideration

. The aggregate consideration for the Purchased Assets shall be (a) an amount in cash equal to THIRTY-NINE MILLION AND NO/100 DOLLARS (\$39,000,000.00), subject to adjustment as provided in Section 3.3 and (b) Thirty-Five Thousand Seven Hundred Fourteen (35,714) shares of the unregistered common stock of Purchaser, hereinafter referred to as Purchaser's Stock (collectively, the "**Purchase Price**") and (c) the assumption of the Assumed Liabilities (together with the Purchase Price, the "**Total Consideration**"). The Purchase Price shall be increased by the agreed upon amount of asset costs directly incurred by Seller in the opening of Branch #7. Set out in Schedule 3.1 is the list of specific asset costs incurred by Seller through November 30, 2011 in the opening of the Arlington, Texas, Branch #7. Notwithstanding the foregoing, such increase in the Purchase Price shall not exceed \$200,000.00.

### 3.2 Payment of Purchase Price

. On the Closing Date, Purchaser shall pay the cash portion of the Purchase Price less the Indemnity Escrow Amount to Seller, which shall be paid by wire transfer of immediately available funds into such accounts as are designated by Seller in writing not fewer than three (3) Business Days prior to the Closing Date. On the Closing Date, Purchaser shall wire transfer, into an account designated by the Escrow Agent, the Indemnity Escrow Amount. On the Closing Date Purchaser shall deliver to Seller evidence of Purchaser's instruments to its transfer agent to issue Purchaser's Stock to Seller or to one or both of the Controlling Shareholders.

### 3.3 Purchase Price Adjustment

(a) As promptly as practicable, but no later than ninety (90) days after the Closing Date, Purchaser shall cause to be prepared and delivered to Seller the Closing Statement (as defined below) and a certificate based on such Closing Statement setting forth Purchaser's calculation of Closing Working Capital. The closing statement (the "**Closing Statement**") shall present the Net Working Capital as of the end of business on the Closing Date ("**Closing Working Capital**"). "**Net Working Capital**" means the current assets of the Business, reduced by the current liabilities of the Business, in each case as determined in accordance with the format and accounting principles set forth on Schedule 3.3(a-1) (the "**Accounting Principles**"). It is agreed that for purposes of determining Net Working Capital, that all inventory reflected in the Financial Statements by Seller will be included in the Net Working Capital calculation unless the adjusted value of same based upon the actual physical inventory count at Closing and any other adjustments identified which are consistent with past practice are less than ninety percent (90%) of the value reflected in the Financial Statements by Seller. In the event the adjusted value is less than ninety percent (90%) of the value reflected in the Financial Statements by Seller, there will be an adjustment to Net Working Capital only for the difference between ninety percent (90%) and the actual adjusted inventory level based on Seller's practices as reflected on Schedule 3.3(a). Excess inventory will not be deducted from the reported inventory or excluded in the Net Working Capital calculation. The preparation of the Closing Statement shall be for the sole purpose of determining changes in Net Working Capital as set out in Section 3.3(e). Attached hereto

as Schedule 3.3(a-2) is a schedule showing the calculation of Net Working Capital as of June 30, 2011 (the “**Reference Date**”) after giving effect to the pro forma adjustments required in the Accounting Principles (“**Reference Statement**”). The Seller represents and warrants to Purchaser that the Reference Statement was prepared in accordance with GAAP consistent with past practice, subject to the Accounting Principles.

(b) If Seller disagrees with Purchaser’s calculation of Closing Working Capital delivered pursuant to Section 3.3(a), Seller may, within thirty (30) days after delivery of the Closing Statement, deliver a notice to Purchaser disagreeing with such calculation and setting forth Seller’s calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Seller disagrees, and Seller shall be deemed to have agreed with all other items and amounts contained in the Closing Statement and the calculation of Closing Working Capital delivered pursuant to Section 3.3(a).

(c) If a notice of disagreement shall be duly delivered pursuant to Section 3.3(b), Purchaser and Seller shall, during the fifteen (15) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Closing Working Capital, which amount shall not be less than the amount thereof shown in Purchaser’s calculation delivered pursuant to Section 3.3(a) nor more than the amount thereof shown in Seller’s calculation delivered pursuant to Section 3.3(b). If the parties so resolve all disputes, the computation of Closing Working Capital, as amended to the extent necessary to reflect the resolution of the dispute, shall be conclusive and binding on the parties. If during such period, Purchaser and Seller are unable to reach an agreement, they shall promptly thereafter cause Kay Parker at Fitts Roberts & Co., P.C. (the “**Accountant**”) to review this Agreement and the disputed items or amounts for the purpose of calculating Closing Working Capital (it being understood that in making such calculation, the Accountant shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accountant shall consider only those items or amounts in the Closing Statement and Seller’s calculation of Closing Working Capital as to which Seller has disagreed. The Accountant shall deliver to Purchaser and Seller, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Accountant), a report setting forth such calculation. Such report shall be final and binding upon Purchaser and Seller. The fees, costs and expenses of the Accountant’s review and report shall be allocated to and borne by Purchaser and Seller based on the inverse of the percentage that the Accountant’s determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Accountant. For example, should the items in dispute total in amount to \$1,000 and the Accountant awards \$600 in favor of Seller’s position, 60% of the costs of its review would be borne by Purchaser and 40% of the costs would be borne by Seller.

(d) Purchaser and Seller shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the Closing Statement and the calculation of Closing Working Capital and in the conduct of the review referred to in this Section 3.3, including the making available to the extent necessary of books, records, work papers and personnel.

(e) If Final Working Capital is less than \$18,000,000, Seller shall pay to Purchaser, in the manner as provided in Section 3.3(f), the amount of such difference as an adjustment to the Purchase Price, and, if Final Working Capital exceeds \$18,401,567, Purchaser shall pay to Seller, in the manner as provided in Section 3.3(f), the amount of such excess as an adjustment to the Purchase Price. “**Final Working Capital**” means Closing Working Capital (i) as shown in Purchaser’s calculation delivered pursuant to Section 3.3(a) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.3(b); or (ii) if such a notice of disagreement is delivered, (A) as agreed by Purchaser and Seller pursuant to Section 3.3(c) or (B) in the absence of such agreement, as shown in the Accountant’s calculation delivered pursuant to Section 3.3(c); provided, however, that in no event shall Final Working Capital be more than Seller’s calculation of Closing Working Capital delivered pursuant to Section 3.3(b) or less than Purchaser’s calculation of Closing Working Capital delivered pursuant to Section 3.3(a).

(f) Any payment pursuant to Section 3.3(e) shall be made within three (3) Business Days after Final Working Capital has been determined by wire transfer by Purchaser or Seller, as the case may be, of immediately available funds to the account of such other party as may be designated in writing by such other party. If the payment is not made within said three (3) Business Days, then the non-paying party shall be responsible for all costs and expenses (including reasonable attorney fees) incurred by the party collecting the payment.

#### 3.4 Federal Income Tax Adjustment

. Attached as Schedule 3.4 is the calculation of the amount of federal income taxes the Controlling Shareholders will pay pursuant to Seller’s Sub-Chapter S election. For federal income tax purposes, Seller has elected Sub-Chapter S status and such election has been approved by the IRS and Seller is in full compliance with the requirements to maintain such Sub-Chapter S status. As promptly as practicable, but no later than ten (10) days prior to the Closing Date, Seller shall cause to be prepared and delivered to Purchaser a statement from Seller’s income tax preparer advising Purchaser of any difference between the federal income taxes, Texas margin taxes and any Louisiana state income or sales taxes the Controlling Shareholders will be required to be paid pursuant to its Sub-Chapter S election status versus the federal income taxes, Texas margin taxes and any Louisiana state income or sales taxes the Controlling Shareholders would pay if this transaction was structured as a sale of all of the issued and outstanding capital stock of Seller to be paid by Seller solely by reason of the sale/transfer of the Purchased Assets and the Assumed Liabilities to Purchaser (the “**Tax Statement**”). If Purchaser disagrees with the Tax Statement, Purchaser may, within seven (7) days after delivery of the Tax Statement, deliver a notice to Seller disagreeing with such calculation and setting forth Purchaser’s calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Purchaser disagrees. During the seven (7) days following Seller’s receipt of Purchaser’s disagreement of the Tax Statement, Seller and Purchaser will use their commercially reasonable efforts to reach an agreement on the disputed items or amounts in order to determine, as may be required, the amount of tax calculated (the “Base Tax Amount”) in the Tax Statement. The Base Tax Amount of tax calculated in the Tax Statement shall be grossed –up to also reimburse Seller for any additional taxes that Seller shall be obligated to paid as a result of receiving the Base Tax Amount and the tax thereon (the “**Gross – Up Tax**”) If the parties so resolve all disputes, the computation of tax calculated in the Tax Statement, as amended to the extent necessary to reflect the resolution of the dispute, shall be conclusive and binding on Seller, Purchaser and the Controlling Shareholders. If during such period, Purchaser and Seller are unable to reach an agreement, they shall promptly thereafter cause Kay Parker at Fitts Roberts & Co., P.C. (the “**Tax Accountant**”) to review this Agreement and the disputed items or amounts for the purpose of calculating the amount of

federal income tax set out in the Tax Statement (it being understood that in making such calculation, the Tax Accountant shall be functioning as an expert and not as an arbitrator). The Tax Accountant shall deliver to Purchaser and Seller, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Tax Accountant), a report setting forth such calculation. Such report shall be final and binding upon Seller, Purchaser and the Controlling Shareholders. The fees, costs and expenses of the Tax Accountant's review and report shall be allocated and paid fifty percent (50%) to Purchaser and fifty percent (50%) to the Controlling Shareholders. Purchaser and Seller shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the Tax Statement and the calculation of the amount of federal income tax set out in the Tax Statement and in the conduct of the review, including the making available, to the extent necessary, of books, records, work papers and personnel. The final determination of the amount of the federal income tax calculated in the Tax Statement (for purposes hereof the Base Tax Amount and the Gross - Up Tax shall be referred to as the "the **Tax Reimbursement**") shall be paid within three (3) Business Days, after the final determination, by wire transfer by Purchaser of immediately available funds to the account of Seller as may be designated in writing. If the payment is not made within said three (3) Business Days, then Purchaser shall be responsible for all costs and expenses (including reasonable attorney fees) incurred by Seller. In the event the IRS makes a subsequent adjustment which results in an additional tax which would not apply if the sale was structured as a sale of stock, Purchaser shall pay such increase in tax and any Gross - Up Tax thereon to Controlling Shareholder, unless Purchaser desires to contest such adjustment by the IRS. In such event, and provided that Seller and Purchaser are unable to otherwise agree, Seller and Purchaser shall submit such adjustment to the Tax Accountant and the Tax Accountant shall determine if and how to proceed with the contest of such adjustment.

## ARTICLE IV

### CLOSING AND TERMINATION

#### 4.1 Closing Date

. The consummation of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "**Closing**") shall take place at the offices of Looper, Reed & McGraw located at 1300 Post Oak Boulevard, Suite 2000, Houston, Texas 77056 (or at such other place as the parties may designate in writing) at 10:00 a.m. (Houston, Texas time) on December 30, 2011 (the "**Closing Date**"), which date shall not be earlier than the Business Day after satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of those conditions at such time), unless another time, date or place is agreed to in writing by the parties hereto.

#### 4.2 Termination of Agreement

. This Agreement may be terminated prior to the Closing as follows:

- (a) At the election of Seller or Purchaser on or after December 31, 2011 (such date, as it may be extended under this Section 4.2(a), the "**Termination Date**"), if the Closing shall not have occurred by the close of business on such date, provided that the terminating party is not in material default of any of its obligations hereunder;
- (b) by mutual written consent of Seller and Purchaser;
- (c) by written notice from Purchaser to Seller that there has been an event, change, occurrence or circumstance that, individually or in the aggregate with any such events, changes, occurrences or circumstances will or could reasonably be expected to result in a Material Adverse Effect;
- (d) by Purchaser, if Seller shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, or if any representation or warranty of Seller shall have become untrue, in either case such that the conditions set forth in Section 9.1(a) or 9.1(b) would not be satisfied and such breach is incapable of being cured or, if capable of being cured, shall not have been cured within ten (10) days following receipt by Seller of notice of such breach and the required cure of such breach from Purchaser; or
- (e) by Seller, if Purchaser shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, or if any representation or warranty of Purchaser shall have become untrue, in either case such that the conditions set forth in Section 9.2(a) or 9.2(b) would not be satisfied and such breach is incapable of being cured or, if capable of being cured, shall not have been cured within ten (10) days following receipt by Purchaser of notice of such breach and the required cure of such breach from Seller.

#### 4.3 Procedure Upon Termination

. In the event of termination by Purchaser or Seller, or both, pursuant to Section 4.2 hereof, written notice thereof shall forthwith be given to the other party or parties, and this Agreement shall terminate, and the purchase of the Assets hereunder shall be abandoned, without further action by Purchaser or Seller.

#### 4.4 Effect of Termination

. In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of their duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Seller; provided, however, that (a) the obligations of the parties set forth in this Section 4.4, Section 7.1, Section 7.8, Section 12.1, and Section 12.9 hereof shall survive any such termination and shall be enforceable hereunder; and (b) nothing in this Section 4.4 shall relieve Purchaser or Seller

of any liability for a breach of this Agreement prior to the effective date of such valid termination.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that:

#### 5.1 Organization and Good Standing

. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted. Seller is duly qualified or authorized to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which it owns or leases real property and each other jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification or authorization. Attached as Schedule 5.1 are true, complete and correct copies of Seller's certificate of incorporation and by-laws or comparable organizational documents, as amended, as presently in effect and a list of all the shareholders of Seller and the number of shares owned by each shareholder.

#### 5.2 Authorization of Agreement

. Seller has all requisite power, authority and legal capacity to execute and deliver this Agreement and Seller has all requisite power, authority and legal capacity to execute and deliver each other agreement, document, or instrument or certificate contemplated by this Agreement or to be executed by Seller in connection with the transactions contemplated by this Agreement (the "**Seller Documents**"), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each of the Seller Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all requisite corporate action on the part of Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by Purchaser) this Agreement constitutes, and each of the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of Seller enforceable against Seller.

#### 5.3 Conflicts; Consents of Third Parties

(a) Except as set forth on Schedule 5.3(a), none of the execution and delivery by Seller of this Agreement or by Seller of the Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Seller with any of the provisions hereof or thereof will conflict with, or result in any violation or breach of, or conflict with or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, or give rise to any obligation of Seller to make any payment under, or to the increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Liens upon any of the properties or assets of Seller under any provision of (i) the certificate of incorporation and by-laws or comparable organizational documents of Seller; (ii) any Contract or Permit to which Seller is a party or by which any of the properties or assets of Seller are bound; (iii) any Order applicable to Seller or by which any of the properties or assets of Seller are bound; or (iv) any applicable Law.

(b) No consent, waiver, approval, Permit or authorization of or filing with, or notification to, any Person or Governmental Body is required on the part of Seller in connection with (i) the execution and delivery of this Agreement or the Seller Documents, the compliance by Seller with any of the provisions hereof and thereof, the consummation of the transactions contemplated hereby and thereby or the taking by Seller of any other action contemplated hereby or thereby, or (ii) the continuing validity and effectiveness immediately following the Closing of any Contract or Permit of Seller, except as set forth on Schedule 5.3(a).

#### 5.4 Financial Statements

(a) Seller has delivered to Purchaser copies of (i) the audited balance sheets of Seller as at December 31, 2008, 2009 and 2010 and the related audited statements of income and of cash flows of Seller for the years then ended and (ii) the unaudited balance sheets of Seller as at June 30, 2011 and September 30, 2011 and the related statements of income and cash flows of Seller for the six and nine month periods then ended and Seller will deliver to Purchaser the Monthly Financial Statements as set out in Section 7.11 (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "**Financial Statements**"). The Financial Statements are set forth in Schedule 5.4. Each of the Financial Statements is true, accurate and correct in all material respects, has been prepared in accordance with GAAP consistently applied (except with respect to the unaudited financial statements for normal recurring year-end adjustments that, individually or in the aggregate, would not be material) without modification of the accounting principles used in the preparation thereof throughout the periods presented and presents fairly in all material respects the financial position, results of operations and cash flows of Seller as at the dates and for the periods indicated.

For the purposes hereof, the audited balance sheet of Seller as at December 31, 2010 is referred to as the "**Balance Sheet**" and December 31, 2010 is referred to as the "**Balance Sheet Date**."

(b) Seller makes and keeps books, records and accounts which, in reasonable detail, accurately and fairly reflect the

transactions and dispositions of Seller's assets and reflects the Business for the audited Financial Statements.

#### 5.5 No Undisclosed Liabilities

. Seller does not have any Indebtedness or Liabilities (whether or not required under GAAP to be reflected on a balance sheet or the notes thereto) other than those (i) specifically reflected in, fully reserved against or otherwise described in the Balance Sheet or the notes thereto, (ii) incurred in the Ordinary Course of Business since the Balance Sheet Date, or (iii) that are immaterial to Seller.

#### 5.6 Title to Purchased Assets; Sufficiency

. Seller owns and has good title to each of the Purchased Assets, free and clear of all Liens. The Purchased Assets constitute all of the Properties used in or held for use in the Business and are sufficient for Purchaser to conduct the Business from and after the Closing Date without interruption and in the Ordinary Course of Business, as it has been conducted by Seller as of the Closing Date.

#### 5.7 Absence of Certain Developments

. Except as expressly contemplated by this Agreement or as set forth on Schedule 5.7, since the Balance Sheet Date, (i) Seller has conducted the Business only in the Ordinary Course of Business and (ii) there has not been any event, change, occurrence or circumstance that, individually or in the aggregate with any such events, changes, occurrences or circumstances, has had or could reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, since the Balance Sheet Date:

(i) there has not been any damage, destruction or loss, whether or not covered by insurance, with respect to the Purchased Assets having a replacement cost of more than \$10,000.00 for any single loss or \$20,000.00 for all such losses;

(ii) Seller has not awarded or paid any bonuses (other than bonuses to be paid by Seller on or before the Closing), to Former Employees or Employees of Seller with respect to the fiscal year that will end December 31, 2011, except to the extent accrued on the Balance Sheet or entered into any employment, deferred compensation, severance or similar agreement (nor amended any such agreement) or agreed to increase the compensation payable or to become payable by it to any of Seller's directors, officers, employees, agents or representatives or agreed to increase the coverage or benefits available under any severance pay, termination pay, vacation pay, company awards, salary continuation for disability, sick leave, deferred compensation, bonus or other incentive compensation (other than bonuses to be paid by Seller on or before the Closing), insurance, pension or other employee benefit plan, payment or arrangement made to, for or with such directors, officers, employees, agents or representatives;

(iii) there has not been any change by Seller in accounting or Tax reporting principles, methods or policies;

(iv) Seller has not made or rescinded any election relating to Taxes or settled or compromised any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, or except as may be required by applicable law, made any change to any of its methods of reporting income or deductions for federal income tax purposes from those employed in the preparation of its most recently filed federal tax returns, in each case, to the extent related to the Business or the Purchased Assets;

(v) Seller has not failed to promptly pay and discharge current liabilities except for liabilities not material in amount that are disputed in good faith by appropriate proceedings;

(vi) Seller has not made any capital investment in, any loan (other than loans to its employees in the Ordinary Course of Business, which shall not exceed \$5,000) to, or any acquisition of the securities or assets of, any other Person other than in the Ordinary Course of Business;

(vii) Seller has not mortgaged, pledged or subjected to any Lien any of its assets, or acquired any assets or sold, assigned, transferred, conveyed, leased or otherwise disposed of any assets of Seller, except for assets acquired or sold, assigned, transferred, conveyed, leased or otherwise disposed of in the Ordinary Course of Business;

(viii) Seller has not discharged or satisfied any Lien, or paid any obligation or Liability, except in the Ordinary Course of Business;

(ix) Seller has not canceled or compromised any debt or claim or amended, modified, canceled, terminated, relinquished, waived or released any Contract or right except in the Ordinary Course of Business and which, in the aggregate, would not be material to Seller taken as a whole;

(x) Seller has not issued, created, incurred, assumed or guaranteed any Indebtedness in an amount in excess of \$100,000.00 in the aggregate;

(xi) Seller has not made or committed to make any capital expenditures (other than for vending machines and vehicles, which shall be disclosed to Purchaser in detail prior to the Closing) in excess of \$100,000.00 individually or \$200,000.00 in the aggregate (other than Arlington, Texas branch #7);

(xii) Seller has not instituted or settled any material Legal Proceeding resulting in a loss of revenue in excess of \$100,000.00 in the aggregate;

(xiii) Seller has not granted any license or sublicense of any rights under or with respect to any Purchased Intellectual Property;

(xiv) Seller has not made any loan (other than Employee loans) to, or entered into any other transaction with, any of its shareholders, Affiliates, officers, directors, partners or employees, except for any advances made to Employees in the Ordinary Course of Business or bonuses that may be paid by Seller to its employees on or before the Closing; and

(xv) Seller has not agreed, committed, arranged or entered into any understanding to do anything set forth in this Section 5.7.

#### 5.8 Taxes.

(a) (i) All Tax Returns required to be filed by or on behalf of Seller relating to the Business or the Purchased Assets have been duly and timely filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns are true, complete and correct in all material respects; and (ii) all Taxes relating to the Business or the Purchased Assets have been fully and timely paid.

(b) All deficiencies asserted or assessments made as a result of any examinations by any Taxing Authority of the Tax Returns relating to the Purchased Assets or the Business have been fully paid, and there are no other audits or investigations by any Taxing Authority in progress, nor has Seller received any notice from any Taxing Authority that it intends to conduct such an audit or investigation relating to the Purchased Assets or the Business.

(c) Schedule 5.8(c) lists (i) all types of Taxes paid, and all types of Tax Returns filed by or on behalf of Seller, in connection with, or with respect to, the Purchased Assets or the Business and (ii) all of the jurisdictions that impose such Taxes or with respect to which Seller has a duty to file such Tax Returns. Seller has made available complete copies of Tax Returns relating to the Purchased Assets or the Business relating to taxable periods that ended after December 31, 2010.

(d) Seller has complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes and has duly and timely withheld and paid over to the appropriate Taxing Authorities all amounts required to be so withheld and paid over under all applicable Laws.

(e) No claim has been made by a Taxing Authority in a jurisdiction in which Seller does not currently file a Tax Return such that Seller is or may be subject to taxation by that jurisdiction.

(f) No agreement, waiver or other document or arrangement extending or having the effect of extending the period for assessment or collection of Taxes (including, but not limited to, any applicable statute of limitation) or the period for filing any Tax Return, in each case with respect to the Business or the Purchased Assets, has been executed or filed with any Taxing Authority by or on behalf of Seller. Seller has not requested any extension of time within which to file any Tax Return with respect to the Business or the Purchased Assets, which Tax Return has since not been filed.

(g) There are no Liens for Taxes upon the Purchased Assets.

(h) No issue has been raised by written inquiry of any Governmental Authority, which, by application of the same principles, would reasonably be expected to affect the Tax treatment of the Purchased Assets or the Business in any taxable period (or portion thereof) ending after the Closing Date.

(i) No power of attorney with respect to any Tax matter is currently in force with respect to the Purchased Assets or the Business that would, in any manner, bind, obligate or restrict Purchaser.

(j) Seller has not executed or entered into any agreement with, or obtained any consents or clearances from, any Taxing Authority, or has been subject to any ruling guidance specific to any of the Sellers, that would be binding on Purchaser for any taxable period (or portion thereof) ending after the Closing Date.

#### 5.9 Real Property

(a) Schedule 5.9(a) sets forth a complete list of all interests in real property leased by Seller and includes a copy of each lease agreement (individually, a “**Real Property Lease**” and collectively, the “**Real Property Leases**”, being referred to herein individually as a “**Seller Property**” and collectively as the “**Seller Properties**”) as lessee or lessor, including a description of each such Real Property Lease (including the name of the third party lessor or lessee and the date of the lease or sublease and all amendments thereto). The Seller Properties constitute all interests in real property currently used, occupied or currently held for use in connection with the Business of Seller and which are necessary for the continued operation of the Business of Seller as the Business is currently conducted. All of the Seller Properties and buildings, fixtures and improvements thereon leased by Seller (i) are in good operating condition without known structural defects, and all mechanical and other systems to the Knowledge of Seller located thereon are in good operating condition, and no condition exists requiring material repairs, alterations or corrections and (ii) are suitable, sufficient and appropriate in all respects for their current and contemplated uses. None of the improvements located on the Seller Properties constitute a legal non-conforming use or otherwise require any special dispensation, variance or special permit under any Laws. Seller has delivered to Purchaser true, correct and complete copies of the Real Property Leases, together with all amendments, modifications or supplements, if any, thereto. Seller Properties are not subject to any leases, rights of first refusal, options to purchase or rights of occupancy, except the Real Property Leases set forth on Schedule 5.9(a). The Seller Properties are

owned by the Controlling Shareholders. At the Closing Purchaser shall enter into a new real property lease for each of the Seller Properties for an initial term of five (5) years and with an option for an additional five (5) year term. The aggregate base rental rate for all the Seller Properties shall initially be \$43,000 per month, and each lease shall be on a triple net lease basis. The form of the lease is attached hereto and incorporated herein as Exhibit A. Each of the existing Real Property Leases shall be terminated at Closing pursuant to a Lease Termination Agreement in the form attached hereto as Exhibit J.

(b) Seller has a valid, binding and enforceable leasehold interest under each of the Real Property Leases under which it is a lessee, free and clear of all Liens. Each of the Real Property Leases is in full force and effect. Seller is not in default under any Lease, and no event has occurred and no circumstance exists which, if not remedied, and whether with or without notice or the passage of time or both, would result in such a default. Seller has not received or given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Real Property Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Real Property Lease has exercised any termination rights with respect thereto.

(c) Seller has all material certificates of occupancy and Permits of any Governmental Body necessary or useful for the current use and operation of each Seller Property, and Seller has fully complied with all material conditions of the Permits applicable to them. No default or violation, or event that with the lapse of time or giving of notice or both would become a default or violation, has occurred in the due observance of any Permit.

(d) There does not exist any actual or, to the Knowledge of Seller, threatened or contemplated condemnation or eminent domain proceedings that affect any Seller Property or any part thereof, and Seller has not received any notice, oral or written, of the intention of any Governmental Body or other Person to take or use all or any part thereof.

(e) Seller has not received any notice from any insurance company that has issued a policy with respect to any Seller Property requiring performance of any structural or other repairs or alterations to such Seller Property.

(f) Seller does not own, hold, is obligated under or is a party to, any option, right of first refusal or other contractual right to purchase, acquire, sell, assign or dispose of any real estate or any portion thereof or interest therein.

#### 5.10 Tangible Personal Property

(a) Seller has good and marketable title to all of the items of tangible personal property used in the Business by Seller (except as sold or disposed of subsequent to the date thereof in the Ordinary Course of Business and not in violation of this Agreement), free and clear of any and all Liens. All such items of tangible personal property which, individually or in the aggregate, are material to the operation of the Business are in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted) and are suitable for the purposes used.

(b) Schedule 5.10 sets forth all leases of personal property (“**Personal Property Leases**”) involving annual payments in excess of \$12,000.00 relating to personal property used by Seller in the Business or to which Seller is a party or by which the properties or assets of Seller are bound. All of the items of personal property under the Personal Property Leases are in good condition and repair (ordinary wear and tear excepted) and are suitable for the purposes used, and such property is in all material respects in the condition required of such property by the terms of the lease applicable thereto during the term of the lease. Seller has delivered to the Purchaser true, correct and complete copies of the Personal Property Leases, together with all amendments, modifications or supplements thereto.

(c) Seller has a valid, binding and enforceable leasehold interest under each of the Personal Property Leases under which it is a lessee. Each of the Personal Property Leases is in full force and effect and Seller has not received or given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Personal Property Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to the Personal Property Leases has exercised any termination rights with respect thereto.

#### 5.11 Intellectual Property

(a) Schedule 5.11(a) sets forth an accurate and complete list of all Patents, registered Marks, pending applications for registration of Marks, unregistered Marks, registered Copyrights, and pending applications for registration of Copyrights included in the Purchased Intellectual Property. Schedule 5.11(a) lists (i) the jurisdictions in which each such item of Purchased Intellectual Property has been issued, registered, otherwise arises or in which any such application for such issuance and registration has been filed and (ii) the registration or application date, as applicable.

(b) Except as disclosed in Schedule 5.11(b), Seller is the sole and exclusive owner of all right, title and interest in and to all of the Purchased Intellectual Property and each of the Copyrights in any works of authorship prepared by or for Seller that resulted from or arose out of any work performed by or on behalf of Seller or by any employee, officer, consultant or contractor of any of them. To the Knowledge of Seller, Seller is the sole and exclusive owner of, or has valid and continuing rights to use, sell and license, as the case may be, all other Purchased Intellectual Property as the same is used, sold and licensed in the Business as presently conducted and proposed to be conducted, free and clear of all Liens or obligations to others (except for those specified licenses included in Schedule 5.11(e)).

(c) The Purchased Intellectual Property, the manufacturing, licensing, marketing, importation, offer for sale, sale or use of any products and services in connection with the Business as presently conducted, do not, to the Knowledge of Seller, infringe, constitute an unauthorized use of, misappropriation or violate any Copyright, Mark, Patent, Trade Secret or other similar right of any Person and, to the Knowledge of Seller, do not infringe, constitute an unauthorized use of, misappropriate, dilute or violate any other Intellectual Property or other

right of any Person (including pursuant to any non-disclosure agreements or obligations to which Seller or any of its Employees or Former Employees is a party). The Purchased Intellectual Property and the Intellectual Property Licenses include all of the Intellectual Property necessary and sufficient to enable Seller to conduct the Business in the manner in which such Business is currently being conducted and proposed to be conducted.

(d) Except with respect to licenses of commercial off-the-shelf Software available on reasonable terms for a license fee of no more than \$10,000, and except pursuant to the Intellectual Property Licenses listed in Schedule 5.11(e), Seller is not required, obligated, or under any liability whatsoever, to make any payments by way of royalties, fees or otherwise to any owner, licensor of, or other claimant to, any Purchased Intellectual Property, or any other Person, with respect to the use thereof or in connection with the conduct of the Business as currently conducted or proposed to be conducted.

(e) Schedule 5.11(e) sets forth a complete and accurate list of all Contracts (i) to which Seller is a party (A) granting any Intellectual Property License, (B) containing a covenant not to compete or otherwise limiting its ability to (x) exploit fully any of the Purchased Intellectual Property or (y) conduct the Business in any market or geographical area or with any Person or (ii) to which Seller is a party containing an agreement to indemnify any other Person against any claim of infringement, unauthorized use, misappropriation, dilution or violation of Intellectual Property. Seller has delivered to Purchaser true, correct and complete copies of each Contract set forth on Schedule 5.11(e) together with all amendments, modifications or supplements thereto.

(f) Each of the Intellectual Property Licenses is in full force and effect and is the legal, valid and binding obligation of the Seller, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Seller is not in default under any Intellectual Property License, nor, to the Knowledge of Seller, is any other party to an Intellectual Property License in default thereunder, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder. No party to any of the Intellectual Property Licenses has exercised any termination rights with respect thereto. Seller has, and will transfer to Purchaser at the Closing, good and valid title to the Intellectual Property Licenses, free and clear of all Liens. Seller has delivered or otherwise made available to Purchaser true, correct and complete copies of all of the Intellectual Property Licenses, together with all amendments, modifications or supplements thereto.

(g) There are no Trade Secrets material to the Business as presently conducted and proposed to be conducted by Seller other than its customer list and its pricing list.

(h) As of the date hereof, Seller is not the subject of any pending or, to the Knowledge of Seller, threatened Legal Proceedings which involve a claim of infringement, unauthorized use, misappropriation, dilution or violation by any Person against Seller or challenging the ownership, use, validity or enforceability of any Purchased Intellectual Property. Seller has not received written (including by electronic mail) notice of any such threatened claim and, to the Knowledge of Seller, there are no facts or circumstances that would form the basis for any such claim or challenge. The Purchased Intellectual Property, and all of Seller's rights in and to the Purchased Intellectual Property, are valid and enforceable.

(i) To the Knowledge of Seller, no Person is infringing, violating, misusing or misappropriating any Purchased Intellectual Property, and no such claims have been made against any Person by Seller.

(j) There are no Orders to which Seller is a party or by which they are bound which restrict, in any material respect, any rights to any Purchased Intellectual Property.

(k) The consummation of the transactions contemplated hereby will not result in the loss or impairment of Purchaser's right to own or use any of the Purchased Intellectual Property.

(l) No Employee or Former Employee of Seller has any right, title or interest, directly or indirectly, in whole or in part, in any material Purchased Intellectual Property. To the Knowledge of Seller, no Employee or Former Employee of Seller engaged in the Business is, as a result of or in the course of such employee's, consultant's or independent contractor's engagement, in default or breach of any material term of any employment agreement, non-disclosure agreement, assignment of invention agreement or similar agreement.

(m) Schedule 5.11(m) sets forth a complete and accurate list of (i) all Software included in the Purchased Technology owned exclusively by Seller that is material to the operation of the Business and (ii) all other Software used in the Business that is not exclusively owned by Seller, excluding commercial-off-the-shelf Software available on reasonable terms for a license fee of no more than \$10,000.

(n) No open source software or freeware has been incorporated into any product of Seller that would in any way limit the ability to make, use or sell such product or that would diminish or transfer the rights of ownership in any Intellectual Property or Software of Seller to a third party.

## 5.12 Material Contracts

(a) Schedule 5.12(a) sets forth, by reference to the applicable subsection of this Section 5.12(a), all of the following material Contracts to which Seller is a party or by which any of them or their respective assets or properties are bound (collectively, the "**Material Contracts**"):

(i) Contracts with any current or former officer, director, stockholder or Affiliate of Seller;



- (ii) Contracts with any labor union or association representing any Employee of Seller;
  - (iii) Contracts for the sale of any of the assets of Seller other than in the Ordinary Course of Business or for the grant to any Person of any preferential rights to purchase any of its assets;
  - (iv) Contracts for joint ventures, strategic alliances, partnerships, licensing arrangements, or sharing of profits or proprietary information;
  - (v) Contracts containing covenants of Seller not to compete in any line of business or with any Person in any geographical area or not to solicit or hire any Person with respect to employment or covenants of any other Person not to compete with Seller in any line of business or in any geographical area or not to solicit or hire any Person with respect to employment;
  - (vi) Contracts relating to the acquisition (by merger, purchase of stock or assets or otherwise) by Seller of any operating business or material assets or the capital stock of any other Person;
  - (vii) Contracts relating to the incurrence, assumption or guarantee of any Indebtedness or imposing a Lien on any of the assets of Seller, including indentures, guarantees, loan or credit agreements, sale and leaseback agreements, purchase money obligations incurred in connection with the acquisition of property, mortgages, pledge agreements, security agreements, or conditional sale or title retention agreements;
  - (viii) purchase Contracts giving rise to Liabilities of Seller in excess of \$25,000.00;
  - (ix) all Contracts providing for payments by or to Seller in excess of \$25,000.00 in any fiscal year or \$50,000.00 in the aggregate during the term thereof;
  - (x) all Contracts obligating Seller to provide or obtain products or services for a period of one year or more or requiring Seller to purchase or sell a stated portion of its requirements or outputs;
  - (xi) Contracts under which Seller has made advances or loans to any other Person;
  - (xii) Contracts providing for severance, retention, change in control or other similar payments;
  - (xiii) Contracts for the employment of any individual on a full-time, part-time or consulting or other basis providing annual compensation in excess of \$50,000.00;
  - (xiv) management Contracts and Contracts with independent contractors or consultants (or similar arrangements) that are not cancelable without penalty or further payment and without more than 30 days' notice;
  - (xv) outstanding Contracts of guaranty, surety or indemnification, direct or indirect, by Seller;
- and
- (xvi) Contracts (or group of related contracts) which involve the expenditure of more than \$25,000.00 annually or \$50,000.00 in the aggregate or require performance by any party more than one year from the date hereof.

(b) Each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of Seller, and of the other parties thereto, enforceable against each of them in accordance with its terms and, upon consummation of the transactions contemplated by this Agreement, shall, except as otherwise stated in Schedule 5.12(b), continue in full force and effect without penalty or other adverse consequence. Seller is not, to the Knowledge of Seller, in default under any Material Contract, nor, to the Knowledge of Seller, is any other party to any Material Contract in breach of or default thereunder, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a breach or default by Seller or any other party thereunder. No party to any of the Material Contracts has exercised any termination rights with respect thereto, and no such party has given notice of any significant dispute with respect to any Material Contract. Seller has, and will transfer to Purchaser at the Closing, to the extent assignable, good and valid title to the Material Contracts, free and clear of all Liens. Seller has delivered to Purchaser true, correct and complete copies of all of the Material Contracts, together with all amendments, modifications or supplements thereto. Seller shall provide Purchaser copies of all the Material Contracts prior to the Closing.

### 5.13 Employee Benefits

(a) Schedule 5.13(a) sets forth a complete and correct list of: (i) all “ **employee benefit plans** ”, as defined in Section 3(3) of ERISA, and all other employee benefit arrangements or payroll practices, including bonus plans, consulting or other compensation agreements, incentive, equity or equity-based compensation, or deferred compensation arrangements, stock purchase, severance pay, sick leave, vacation pay, salary continuation, disability, hospitalization, medical insurance, life insurance, scholarship programs maintained by Seller or to which Seller contributed or is obligated to contribute thereunder for current or former employees of the Seller or that cover Employees of Seller (the “ **Employee Benefit Plans** ”), and (ii) all “ **employee pension plans** ”, as defined in Section 3(2) of ERISA, subject to Title IV of ERISA or section 412 of the Code, maintained by Seller and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with Seller under Sections 414(b), (c), (m) or (o) of the Code (“

**ERISA Affiliate**”) or to which Seller and any ERISA Affiliate contributed or has ever been obligated to contribute thereunder (the “**ERISA Affiliate Plans**”). Schedule 5.13(a) separately sets forth each Seller or ERISA Affiliate Plan which is a multiemployer plan as defined in Section 3(37) of ERISA (“**Multiemployer Plans**”), or has been subject to Sections 4063 or 4064 of ERISA (“**Multiple Employer Plans**”).

(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans and ERISA Affiliate Plans (as applicable), have been delivered to Purchaser (A) any plans and related trust documents, and all amendments thereto, (B) the most recent Forms 5500 for the past three (3) years and schedules thereto, (C) the most recent financial statements and actuarial valuations for the past three (3) years, (D) the most recent IRS determination letter, (E) the most recent summary plan descriptions (including letters or other documents updating such descriptions) and (F) written descriptions of all non-written agreements relating to the Employee Benefit Plans and ERISA Affiliate Plans.

(c) Each of the Employee Benefit Plans and ERISA Affiliate Plans intended to qualify under section 401 of the Code (“**Qualified Plans**”) so qualify and the trusts maintained thereto are exempt from federal income taxation under section 501 of the Code, and, except as disclosed on Schedule 5.13(c), nothing has occurred with respect to the operation of any such plan which could cause the loss of such qualification or exemption or the imposition of any liability, penalty or tax under ERISA or the Code.

(d) All contributions and premiums required by Law or by the terms of any Employee Benefit Plan or ERISA Affiliate Plan or any agreement relating thereto have been timely made (without regard to any waivers granted with respect thereto) to any funds or trusts established thereunder or in connection therewith, and no accumulated funding deficiencies exist in any of such plans subject to section 412 of the Code, and all contributions for any period ending on or before the Closing Date which are not yet due will have been paid or accrued on the Balance Sheet on or prior to the Closing Date.

(e) The benefit liabilities, as defined in Section 4001(a)(16) of ERISA, of each of the Employee Benefit Plans and ERISA Affiliate Plans subject to Title IV of ERISA using the actuarial assumptions that would be used by the Pension Benefit Guaranty Corporation (the “**PBGC**”) in the event it terminated each such plan, do not exceed the fair market value of the assets of each such plan. The liabilities of each Employee Benefit Plan that has been terminated or otherwise wound up have been fully discharged in full compliance with applicable Law.

(f) There has been no “reportable event” as that term is defined in Section 4043 of ERISA and the regulations thereunder with respect to any of the Employee Benefit Plans or ERISA Affiliate Plans subject to Title IV of ERISA which would require the giving of notice, or any event requiring notice to be provided under Section 4041(c)(3)(C) or 4063(a) of ERISA.

(g) Seller, any ERISA Affiliate or any organization to which Seller or any ERISA Affiliate is a successor or parent corporation, within the meaning of Section 4069(b) of ERISA, has engaged in any transaction, within the meaning of Section 4069 of ERISA.

(h) Except for the group life and accidental death and dismemberment insurance coverage provided under Seller's insurance program, none of the Employee Benefit Plans which are “welfare benefit plans” within the meaning of Section 3(1) of ERISA provide for continuing benefits or coverage for any participant or any beneficiary of a participant post-termination of employment except as may be required under COBRA and at the expense of the participant or the participant’s beneficiary. Each of Seller and any ERISA Affiliate which maintains a “group health plan” within the meaning of section 5000(b)(1) of the Code has complied with the notice and continuation requirements of section 4980B of the Code, COBRA, Part 6 of Subtitle B of Title I of ERISA and the regulations thereunder.

(i) There has been no violation of ERISA or the Code with respect to the filing of applicable returns, reports, documents and notices regarding any of the Employee Benefit Plans or ERISA Affiliate Plans with the Secretary of Labor or the Secretary of the Treasury or the furnishing of such notices or documents to the participants or beneficiaries of the Employee Benefit Plans or ERISA Affiliate Plans.

(j) There are no pending Legal Proceedings which have been asserted or instituted against any of the Employee Benefit Plans or ERISA Affiliate Plans, the assets of any such plans or Seller, or the plan administrator or any fiduciary of the Employee Benefit Plans or ERISA Affiliate Plans with respect to the operation of such plans (other than routine, uncontested benefit claims), and there are no facts or circumstances which could form the basis for any such Legal Proceeding.

(k) Each of the Employee Benefit Plans and ERISA Affiliate Plans has been maintained, in all material respects, in accordance with its terms and all provisions of applicable Law. All amendments and actions required to bring each of the Employee Benefit Plans and ERISA Affiliate Plans into conformity in all material respects with all of the applicable provisions of ERISA and other applicable Laws have been made or taken.

(l) Seller and any ERISA Affiliate which maintains a “benefits plan” within the meaning of Section 5000(b)(1) of ERISA, have complied with the notice and continuation requirements of section 4980B of the Code or Part 6 of Title I of ERISA and the applicable regulations thereunder.

(m) None of Seller or any ERISA Affiliate or any organization to which any is a successor or parent corporation, has divested any business or entity maintaining or sponsoring a defined benefit pension plan having unfunded benefit liabilities (within the meaning of Section 4001(a)(18) of ERISA) or transferred any such plan to any person other than Seller or any ERISA Affiliate during the five-year period ending on the Closing Date.

(n) Neither Seller nor any “party in interest” or “disqualified person” with respect to the Employee Benefit Plans or ERISA Affiliate Plans has engaged in a non-exempt “prohibited transaction” within the meaning of section 4975 of the Code or Section 406 of ERISA.

(o) None of Seller or any ERISA Affiliate has terminated any Employee Benefit Plan or ERISA Affiliate Plan subject to

Title IV of ERISA, or incurred any outstanding liability under Section 4062 of ERISA to the Pension Benefit Guaranty Corporation or to a trustee appointed under Section 4042 of ERISA.

(p) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment becoming due to any Employee of Seller; (ii) increase any benefits otherwise payable under any Employee Benefit Plan or ERISA Affiliate Plan; or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

(q) Seller is not a party to any contract, plan or commitment, whether legally binding or not, to create any additional Employee Benefit Plan or ERISA Affiliate Plan, or to modify any existing Employee Benefit Plan or Pension Plan.

(r) No stock or other security issued by Seller forms or has formed a material part of the assets of any Employee Benefit Plan or ERISA Affiliate Plan.

(s) Any individual who performs services for Seller (other than through a contract with an organization other than such individual) and who is not treated as an employee for federal income tax purposes by Seller is not an employee for such purposes.

#### 5.14 Labor

(a) Seller is not a party to any labor or collective bargaining agreement and there are no labor or collective bargaining agreements which pertain to Employees of Seller.

(b) No Employees are represented by any labor organization. No labor organization or group of Employees of Seller has made a pending demand for recognition, and there are no representation proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of Seller, threatened to be brought or filed, with the National Labor Relations Board or other labor relations tribunal. There is no organizing activity involving Seller pending or, to the Knowledge of Seller, threatened by any labor organization or group of Employees.

(c) There are no (i) strikes, work stoppages, slowdowns, lockouts or arbitrations or (ii) material grievances or other labor disputes pending or, to the Knowledge of Seller, threatened against or involving Seller involving any Employee. There are no unfair labor practice charges, grievances or complaints pending or, to the Knowledge of Seller, threatened by or on behalf of any Employee or Former Employee.

(d) There are no complaints, charges or claims against Seller pending or, to Knowledge of Seller, threatened that could be brought or filed, with any Governmental Body or based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by Seller, of any individual. Seller is in compliance with all Laws relating to the employment of labor, including all such Laws relating to wages, hours, collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of withholding and/or social security taxes and any similar tax except for immaterial non-compliance.

#### 5.15 Legal Proceedings

. Except as set forth in Schedule 5.15, there is no Legal Proceeding pending or, to the Knowledge of Seller, threatened against Seller (or to the Knowledge of Seller, pending or threatened, against any of the officers, directors or key Employees of Seller or with respect to their business activities on behalf of Seller), or to which Seller is otherwise a party, before any Governmental Body; nor to the Knowledge of Seller is there any reasonable basis for any such Legal Proceeding. Except as set forth on Schedule 5.15, Seller is not subject to any Order, and Seller is not in breach or violation of any Order. Except as set forth on Schedule 5.15, Seller is not engaged in any legal action to recover monies due it or for damages sustained by it. There are no Legal Proceedings pending or, to the Knowledge of Seller, threatened against Seller or to which Seller is otherwise a party relating to this Agreement or any Seller Document or the transactions contemplated hereby or thereby.

#### 5.16 Compliance with Laws; Permits

(a) Seller is, to the Knowledge of Seller, in compliance in all material respects with all Laws applicable to their respective operations or assets or the Business. Seller has not received any written or other notice of or been charged with the violation of any Laws. To the Knowledge of Seller, Seller is not under investigation with respect to the violation of any Laws and there are no facts or circumstances which could form the basis for any such violation.

(b) Schedule 5.16(b) contains a list of all Permits which are required for the operation of the Business as presently conducted and as presently intended to be conducted ("**Seller Permits**"), other than those the failure of which to possess is immaterial. Seller currently has all Permits which are required for the operation of the Business as presently conducted and as presently intended to be conducted, other than those the failure of which to possess is immaterial. Seller is not in default or violation, and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation, in any material respect of any term, condition or provision of any Seller Permit and, to the Knowledge of Seller, there are no facts or circumstances which could form the basis for any such default or violation. There are no Legal Proceedings pending or, to the Knowledge of Seller, threatened, relating to the suspension, revocation or modification of any of the Seller Permits. None of the Seller Permits will be impaired or in any way affected by the consummation of the transactions contemplated by this Agreement.

#### 5.17 Environmental Matters

. Except as set forth on Schedule 5.17 hereto:

(a) the operations of Seller, with respect to the Business, are and have been in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining in good standing and complying with all Environmental Permits necessary to operate the Business and no action or proceeding is pending or, to the Knowledge of Seller, threatened to revoke, modify or terminate any such Environmental Permit, and, to the Knowledge of the Seller, no facts, circumstances or conditions currently exist that could adversely affect such continued compliance with Environmental Laws and Environmental Permits or require currently unbudgeted capital expenditures to achieve or maintain such continued compliance with Environmental Laws and Environmental Permits. Seller makes no warranties or representations to Seller's customers as to the products manufactured by third parties or the effect same may have as to any Environmental Laws;

(b) with respect to the Business, Seller is not the subject of any outstanding written order or Contract with any Governmental Body or Person respecting (i) Environmental Laws, (ii) Remedial Action or (iii) any Release or threatened Release of a Hazardous Material;

(c) no claim has been made or is pending or to the Knowledge of Seller, threatened against the Seller, alleging, with respect to the Business, that Seller may be in violation of any Environmental Law or any Environmental Permit or may have any liability under any Environmental Law;

(d) to the Knowledge of Seller, no facts, circumstances or conditions exist with respect to the Business or any property currently or formerly owned, operated or leased by the Seller or any property to which Seller arranged for the disposal or treatment of Hazardous Materials that could reasonably be expected to result in the Business incurring unbudgeted Environmental Costs or Liabilities;

(e) to the Knowledge of Seller, there are no investigations of the Business, or currently or to the Knowledge of Seller, previously owned, operated or leased property of Seller or pending, or to the Knowledge of Seller, threatened which could lead to the imposition of any Environmental Costs or Liabilities or Liens under Environmental Law;

(f) The transactions contemplated hereunder do not require the consent of or filings with any Governmental Body with jurisdiction over Seller and over environmental matters;

(g) there is not located at any of the Real Property Leases, or at any property previously owned operated or leased by Seller, any (i) underground storage tanks, (ii) landfill, (iii) surface impoundment, (iv) asbestos-containing material or (v) equipment containing polychlorinated biphenyls; and

(h) Seller has provided to Purchaser all environmentally related audits, studies, reports, analyses and results of investigations that have been performed with respect to any currently or previously owned, leased or operated properties of Seller.

#### 5.18 Insurance

. Seller has insurance policies in full force and effect (a) for such amounts as are sufficient for all requirements of Law and all agreements to which Seller is a party or by which it is bound and (b) which are in such amounts, with such deductibles and against such risks and losses, as a reasonable for the business, assets and properties of Seller. Set forth in Schedule 5.18 is a list of all insurance policies held by or applicable to Seller setting forth, in respect of each such policy, the policy name, carrier, term, type and amount of coverage. Seller has no fidelity bonds. Except as set forth on Schedule 5.18, no event relating to Seller has occurred which could reasonably be expected to result in a retroactive upward adjustment in premiums under any such insurance policies or which could reasonably be expected to result in a prospective upward adjustment in such premiums. Excluding insurance policies (other than health insurance policies that have expired and been replaced in the Ordinary Course of Business, no insurance policy has been cancelled within the last two years and, to the Knowledge of Seller, no threat has been made to cancel any insurance policy of Seller during such period. No event has occurred, including the failure by Seller to give any notice or information, or Seller giving any inaccurate or erroneous notice or information, which limits or impairs the rights of Seller under any such insurance policies.

#### 5.19 Inventories

. The inventories of Seller are in good and marketable condition, and are saleable in the ordinary course of business. The inventories of Seller set forth in the Balance Sheet were valued at the lower of cost (on an average cost basis) or market and were properly stated therein in accordance with past practice and sufficient for audit purposes. Reserves have been reflected in the Balance Sheet for obsolete, damaged, slow-moving or otherwise unusable inventory, which reserves were calculated in a manner consistent with Seller's practices as set forth on Schedule 3.3(a). The inventories do not consist, except as contained in the reserves, of any items that are unsaleable, defective, damaged, not in good condition or fails to meet government, industry or manufacturer standards. Each year the Seller runs a report of inventory by branch that has not been sold or purchased in the prior 18 months and adjusts the valuation of such inventory to zero but retains any such inventory in the inventory system.

#### 5.20 Accounts and Notes Receivable and Payable.

(a) All accounts and notes receivable of Seller have arisen from bona fide transactions in the Ordinary Course of Business consistent with past practice and are payable on ordinary trade terms. All accounts and notes receivable of Seller reflected on the Balance Sheet are good and collectible subject to a customer's inability to pay at the aggregate recorded amounts thereof. None of the accounts or the notes receivable of Seller (i) are subject to any setoffs or counterclaims or (ii) represent obligations for goods sold on consignment, on approval or on

sale-or-return basis or subject to any other repurchase or return arrangement.

(b) All accounts payable of Seller reflected in the Balance Sheet or arising after the date thereof are the result of bona fide transactions in the ordinary course of business and have been paid or are not yet due and payable.

(c) Except as set out in Schedule 5.20(c), none of the accounts receivable are more than one hundred twenty (120) days past due, except for accounts receivable which are less than \$150,000.00 in the aggregate.

#### 5.21 Related Party Transactions.

Except as set out in Schedule 5.21, no Employee, officer, director, stockholder, partner or member of Seller, any member of his or her immediate family or any of their respective Affiliates (“**Related Persons**”) (i) owes any amount to Seller nor does Seller owe any amount to, or has Seller committed to make any loan or extend or guarantee credit to or for the benefit of, any Related Person, (ii) is involved in any business arrangement or other relationship with Seller (whether written or oral), (iii) owns any property or right, tangible or intangible, that is used by Seller, (iv) has any claim or cause of action against Seller or (v) owns any direct or indirect interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any Person which is a competitor, supplier, customer, landlord, tenant, creditor or debtor of Seller.

#### 5.22 Customers and Suppliers.

(a) Schedule 5.22 sets forth a list of the fifteen largest customers and the fifteen largest suppliers of Seller, as measured by the dollar amount of purchases therefrom or thereby, during each of the fiscal years ended December 31, 2009 and December 31, 2010, showing the approximate total sales by Seller to each such customer and the approximate total purchases by Seller from each such supplier, during such period.

(b) Since the Balance Sheet Date, to the Knowledge of Seller, no customer or supplier listed on Schedule 5.22 has advised an officer of Seller in writing that it has terminated its relationship with Seller or materially reduced or changed the pricing or other terms of its business with Seller and, to the Knowledge of Seller, no customer or supplier listed on Schedule 5.22 has notified an officer of Seller that it intends to terminate or materially reduce or change the pricing or other terms of its business with Seller.

#### 5.23 Product Warranty; Product Liability.

(a) Seller acts solely in the capacity of a distributor of third party products. Each product sold or delivered by Seller in conducting the Business has been in conformity with all product specifications and all express and implied warranties of the manufacturer of such products and all applicable Laws. Seller does not have any liability for replacement or repair of any such products or other damages in connection therewith or any other customer or product obligations not reserved against on the Balance Sheet. Seller has not sold any products or delivered any services that included a warranty other than the warranty from the manufacturer of such products.

(b) Seller does not have material liability arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product sold by Seller. Seller has not committed any act or failed to commit any act which would result in, and there has been no occurrence which would give rise to or form the basis of, any product liability or liability for breach of warranty (whether covered by insurance or not) on the part of Seller with respect to products sold by Seller.

#### 5.24 Banks

. Schedule 5.24 contains a complete and correct list of the names and locations of all banks in which Seller has accounts or safe deposit boxes and all account numbers and all lock boxes.

#### 5.25 Full Disclosure

. No representation or warranty of Seller contained in this Agreement or any of the Seller Documents and no written statement made by or on behalf of Seller to Purchaser or any of its Affiliates pursuant to this Agreement or any of the Seller Documents, to the Knowledge of Seller, contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact which Seller has not disclosed to Purchaser in writing which could reasonably be expected to have a Material Adverse Effect.

#### 5.26 Financial Advisors

. Except as set forth on Schedule 5.26, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated by this Agreement and no Person is or will be entitled to any fee or commission or like payment in respect thereof.

#### 5.27 Certain Payments

. To the Knowledge of Seller, any director, officer, employee, or other Person associated with or acting on behalf of any of them, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business for Seller, (ii) to pay for favorable treatment for business secured by Seller, (iii) to obtain special concessions or for special concessions already obtained, for or in

respect of Seller, or (iv) in violation of any Law, or (b) established or maintained any fund or asset with respect to Seller that has not be recorded in the books and records of Seller.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

#### 6.1 Organization and Good Standing

. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas.

#### 6.2 Authorization of Agreement

. Purchaser has full corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the transactions contemplated hereby and thereby (the “**Purchaser Documents**”), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and each Purchaser Document have been duly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

#### 6.3 Conflicts; Consents of Third Parties

(a) None of the execution and delivery by Purchaser of this Agreement and of the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Purchaser with any of the provisions hereof or thereof will conflict with, or result in violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the certificate of incorporation and by-laws or comparable organizational documents of such Purchaser; (ii) any Contract, or Permit to which Purchaser is a party or by which any of the properties or assets of Purchaser are bound; (iii) any Order of any Governmental Body applicable to Purchaser or by which any of the properties or assets of Purchaser are bound; or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents or the compliance by Purchaser with any of the provisions hereof or thereof, except for such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings or notifications that, if not obtained, made or given, would not, individually or in the aggregate, have a Material Adverse Effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

#### 6.4 Litigation

. There are no Legal Proceedings pending or, to the Knowledge of Purchaser, threatened that are reasonably likely to prohibit or restrain the ability of Purchaser to enter into this Agreement or consummate the transactions contemplated hereby.

#### 6.5 Financial Advisors

. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

#### 6.6 Financing

. Purchaser has provided to Seller a copy of the letter from Wells Fargo Bank to Seller regarding Purchaser’s credit commitments.

## ARTICLE VII COVENANTS

#### 7.1 Access to Information

. Seller and the Controlling Shareholders shall afford to Purchaser and its accountants, counsel, financial advisors and other representatives, and to prospective lenders, placement agents and other financing sources and each of their respective representatives, full access, during normal business hours upon reasonable prior written notice throughout the period prior to the Closing, to their respective properties and facilities (including all real property and the buildings, structures, fixtures, appurtenances and improvements erected, attached or located thereon), books, financial information (including working papers and data in the possession of Seller or their respective public accountants), Contracts, commitments and records and, during such period, shall furnish promptly such information concerning its businesses, properties and

personnel of Seller as Purchaser shall reasonably request; provided, however, such investigation shall not unreasonably disrupt Seller's operations. Seller shall deliver to Purchaser the Seller's Disclosure Schedules Letter, in the form attached hereto as Exhibit G, on or before ten (10) Business Days prior to the Closing Date. Prior to the Closing, Seller and the Controlling Shareholders shall generally keep Purchaser informed as to all material matters involving the operations and businesses of Seller. Seller and the Controlling Shareholders shall authorize and direct the appropriate directors, managers and employees of Seller to discuss matters involving the operations and business of the Seller with representatives of Purchaser. Purchaser may, within the presence of Seller or one of the Controlling Shareholders, contact any of Seller's customers, key employees, suppliers and any third parties conducting business with the Seller. All nonpublic information provided to, or obtained by, Purchaser in connection with the transactions contemplated hereby shall be "Confidential Information" for purposes of the Confidentiality Agreement dated August 23, 2011 between Purchaser and Seller (the "Confidentiality Agreement"), the terms of which shall continue in force until the Closing. Notwithstanding the foregoing, Seller shall not be required to disclose any information if such disclosure, in the opinion of counsel for Seller, would contravene any applicable Law. No information provided to or obtained by Purchaser pursuant to this Section 7.1 shall limit or otherwise affect the remedies available hereunder to Purchaser (including, but not limited to, Purchaser's right to seek indemnification pursuant to Article X), or the representations or warranties of, or the conditions to the obligations of, the parties hereto.

7.2 Intentionally Omitted.

7.3 Further Assurances

. Subject to, and not in limitation of, Section 7.4, Seller, Controlling Shareholders and Purchaser shall each use its commercially reasonable efforts to (i) take, or cause to be taken, all actions necessary or appropriate to consummate the transactions contemplated by this Agreement other than securing the consent of its suppliers and customers to assign its contacts with Seller, and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement.

7.4 No Shop.

(a) Seller and the Controlling Shareholders shall not, and shall not permit any of the Affiliates, directors, officers, Employees, representatives or agents of Seller (collectively, the "Representatives") to, directly or indirectly from the date of this Agreement to and including December 30, 2011, (i) discuss, encourage, negotiate, undertake, initiate, authorize, recommend, propose or enter into, either as the proposed surviving, merged, acquiring or acquired corporation, any transaction involving a merger, consolidation, business combination, purchase or disposition of any material amount of the Purchased Assets or any capital stock of Seller other than the transactions contemplated by this Agreement (an "Acquisition Transaction"), (ii) facilitate, encourage, solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (iii) furnish or cause to be furnished, to any Person, any information concerning the business, operations, properties or assets of Seller in connection with an Acquisition Transaction, or (iv) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek any of the foregoing.

(b) Seller shall notify Purchaser orally and in writing promptly (but in no event later than 24 hours) after receipt by Seller or any Representatives thereof of any proposal or offer from any Person other than Purchaser to effect an Acquisition Transaction or any request for non-public information relating to Seller or for access to the properties, books or records of Seller by any Person other than Purchaser. Such notice shall not disclose the identity of the Person making the proposal or offer, or intending to make a proposal or offer or requesting non-public information or access to the books and records of Seller, the material terms of any such proposal or offer, or modification or amendment to such proposal or offer and copies of any written proposals or offers or amendments or supplements thereto. Seller shall keep Purchaser informed, on a current basis, of any material changes in the status and any material changes or modifications in the material terms of any such proposal, offer, indication or request.

7.5 Non-Competition; Non-Solicitation; Confidentiality.

(a) For a period from the date hereof until the fourth (4th) anniversary of the Closing Date, Seller and the Controlling Shareholders shall not and shall cause its Affiliates not to, directly or indirectly, own, manage, operate, control or participate in the ownership, management, operation or control of any business or become employed by or associated with, whether in individual, corporate, proprietorship or partnership form or any other form, engaged in the Business or that otherwise competes with the Business (a "Restricted Business"); provided, however, that the restrictions contained in this Section 7.6(a) shall not restrict the acquisition by Seller, directly or indirectly, of less than 5% of the outstanding capital stock of any publicly traded company engaged in a Restricted Business. The parties hereto specifically acknowledge and agree that the remedy at law for any breach of the foregoing will be inadequate and that Purchaser, in addition to any other relief available to it, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damage or posting any bond whatsoever.

(b) For a period from the date hereof to the fourth (4th) anniversary of the Closing Date, Seller and the Controlling Shareholders shall not and shall cause its directors, officers, and Affiliates not, either directly or indirectly, to: (i) cause, solicit, induce or encourage any Employees, contractor, consultant, agent or representative of Seller to leave such employment/engagement or hire, employ or otherwise engage any such individual; or (ii) cause, induce, solicit, accept business or encourage any actual or prospective client, customer, supplier or licensor of the Business (including any existing or former customer of Seller and any Person that becomes a client or customer of the Business after the Closing) or any other Person who has a business relationship with the Business, to terminate, withdraw, curtail or modify any such actual or prospective relationship.

(c) From and after the date hereof, Seller and the Controlling Shareholders shall not and shall cause its Affiliates and their respective officers, and directors not to, directly or indirectly, disclose, reveal, divulge or communicate to any Person other than authorized officers, directors and employees of Purchaser or use or otherwise exploit for its own benefit or for the benefit of anyone other than the Purchaser, any Confidential Information (as defined below). The Seller and its officers, directors and Affiliates shall not have any obligation to

keep confidential any Confidential Information if and to the extent disclosure thereof is specifically required by law; provided, however, that in the event disclosure is required by applicable Law, the Seller shall, to the extent reasonably possible, provide Purchaser with prompt notice of such requirement prior to making any disclosure so that Purchaser may seek an appropriate protective order. For purposes of this Section 7.6(c), “**Confidential Information**” means any information with respect to the Business, including but not limited to, Seller’s written, oral, electronic and visual information related to:

- (1) Lists of, and all information about, each person or entity to which Purchaser has sold products or has provided services of any kind, or with which Purchaser has entered into an agreement, or made a sale of any kind, including both current and prospective (all of which are hereinafter collectively referred to as “Customers” or individually as “Customer”);
- (2) All the Customers’ contact information, which includes information about the identity and location of individuals with decision-making authority and the particular preferences, needs or requirements of the Customer, or such individual, with respect to quantities, transportation or delivery of products, or particular needs or requirements of Customers based on geographical, economic or other factors;
- (3) All of Purchaser’s pricing and formulas, methodologies, practices and systems, including those based upon particular Customers, particular quantities, or based on geographic, seasonal, economic or other factors, including all information about the price, terms, quantities or conditions of products or services sold or furnished by Purchaser to its Customers;
- (4) Financial information or any kind relating to sales and purchase histories, trend information about the growth or shrinking of a particular Customer’s needs, purchases or requirements; profit margins or markups or rebate programs, as well as all information about the costs and expenses which Purchaser incurs to provide products or services to its Customers;
- (5) Purchaser’s procedures, forms, methods, and systems for marketing to Customers and potential customers including all of its Customer development techniques and procedures, including training and other internal manuals, forms and documents;
- (6) Technology, Trade Secrets or Software of Purchaser or any of its Customers or suppliers;
- (7) Financial information of any kind about Purchaser or its operations; and
- (8) All information about Purchaser’s employees, including their addresses and phone numbers, pay rates, benefits and compensation packages or history.

Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the date of this Agreement or (ii) becomes generally available to the public other than as a result of a disclosure not otherwise permissible thereunder.

(d) The covenants and undertakings contained in this Section 7.6 relate to matters which are of a special, unique and extraordinary character and a violation of any of the terms of this Section 7.6 will cause irreparable injury to Purchaser, the amount of which will be impossible to estimate or determine and which cannot be adequately compensated. Accordingly, the remedy at law for any breach of this Section 7.6 will be inadequate. Therefore, Purchaser will be entitled to an injunction, restraining order or other equitable relief from any court of competent jurisdiction in the event of any breach of this Section 7.6 without the necessity of proving actual damages or posting any bond whatsoever. The rights and remedies provided by this Section 7.6 are cumulative and in addition to any other rights and remedies which Purchaser may have hereunder or at law or in equity. In the event that Purchaser were to seek damages for any breach of this Section 7.6, the portion of the Purchase Price which is allocated by the parties to the foregoing covenant shall not be considered a measure of or limit on such damages.

(e) The parties hereto agree that, if any court of competent jurisdiction in a final nonappealable judgment determines that a specified time period, a specified geographical area, a specified business limitation or any other relevant feature of this Section 7.6 is unreasonable, arbitrary or against public policy, then a lesser time period, geographical area, business limitation or other relevant feature which is determined by such court to be reasonable, not arbitrary and not against public policy may be enforced against the applicable party.

#### 7.6 Preservation of Records

Seller, Purchaser and the Controlling Shareholders agree that each of them shall preserve and keep the records held by it or their Affiliates relating to the Business for a period of three years from the Closing Date and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any insurance claims by, legal proceedings against or governmental investigations of Seller or Purchaser or any of their Affiliates or in order to enable Seller or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller or Purchaser wishes to destroy (or permit to be destroyed) such records after that time, such party shall first give ninety days prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within that ninety-day period, to take possession of the records within 180 days after the date of such notice.

#### 7.7 Publicity

(a) Neither Seller nor Purchaser nor the Controlling Shareholders shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of the applicable party, disclosure is otherwise required by



applicable Law or by the applicable rules of any stock exchange on which Purchaser lists securities, provided that, to the extent required by applicable Law or applicable stock exchange rules, Purchaser shall use its commercially reasonable efforts consistent with such applicable Law to provide notice to Seller and the Controlling Shareholders with respect to the timing and content thereof.

(b) Purchaser, Seller and the Controlling Shareholders agree that the terms of this Agreement shall not be disclosed or otherwise made available to the public and that copies of this Agreement shall not be publicly filed or otherwise made available to the public, except where such disclosure, availability or filing is required by applicable Law or by the rules of any stock exchange and only to the extent required by such Law.

#### 7.8 Use of Name

. Seller and the Controlling Shareholders hereby agree that upon the Closing, Purchaser shall have the sole right to the use of the name "C. W. Rod Tool" or similar names, and any service marks, trademarks, trade names, d/b/a names, fictitious names, identifying symbols, logos, emblems or signs containing or comprising the foregoing, or otherwise used in the Business, including any name or mark confusingly similar thereto (collectively, the "**Seller Marks**"); provided however, Seller and its Affiliates may use the name "C. W. Rod" for any business that is not competitive with the Business and Seller shall not, and shall not permit any Affiliate to, use such name or any variation or simulation thereof in conjunction with "Tool". In the event Purchaser ceases to use the name "C. W. Rod Tool" for a continuous period of twelve (12) months, Seller or its Affiliates shall be entitled to own same.

#### 7.9 Environmental Matters

(a) Seller and the Controlling Shareholders shall permit Purchaser and Purchaser's environmental consultant to conduct such investigations (including investigations known as "Phase I" and "Phase II" environmental Site Assessments) of the environmental conditions of any real property operated or leased by or for Seller and the operations thereat (subject to any limitations contained in valid, previously executed leases) as Purchaser, in its reasonable discretion, shall deem necessary ("**Purchaser's Environmental Assessment**"). Purchaser's Environmental Assessment shall be conducted by a qualified environmental consulting firm, possessing reasonable levels of insurance, in compliance with applicable Laws and in a manner that minimizes the disruption of the operations of Seller. Purchaser shall promptly repair any material damage caused by said Site Assessments.

(b) Seller shall promptly file all materials required by Environmental Laws as a result of or in furtherance of the transactions contemplated hereunder, and all requests required or necessary for the transfer or re-issuance of Environmental Permits required to conduct the Business after the Closing Date. Purchaser shall cooperate in all reasonable respects with Seller with respect to such filings and Environmental permit activities.

#### 7.10 Monthly Financial Statements

. As soon as reasonably practicable, but in no event later than fifteen (15) days after the end of each calendar month after October 31, 2011, Seller shall provide Purchaser with (i) unaudited monthly financial statements and (ii) operating or management reports (such reports to be in the form prepared by Seller in the Ordinary Course of Business) for which financial statements are prepared (to the extent the same are prepared in the Ordinary Course of Business) for such preceding month. Each set of financial statements required to be delivered under this Section 7.10 are referred to as the "**Monthly Financial Statements**" and the Monthly Financial Statements shall be included within the defined term Financial Statements without footnotes and year-end adjustments.

#### 7.11 Notification of Certain Matters

. Seller and the Controlling Shareholders shall give notice to Purchaser and Purchaser shall give notice to Seller and the Controlling Shareholders, as promptly as reasonably practicable upon becoming aware of (a) any fact, change, condition, circumstance, event, occurrence or non-occurrence that has caused or is reasonably likely to cause any representation or warranty in this Agreement made by it to be untrue or inaccurate in any respect at any time after the date hereof and prior to the Closing, (b) any material failure on its part to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder or (c) the institution of or the threat of institution of any Legal Proceeding against Seller related to this Agreement or the transactions contemplated hereby; provided that the delivery of any notice pursuant to this Section 7.11 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice, or the representations or warranties of, or the conditions to the obligations of, the parties hereto.

#### 7.12 Issuance of Purchaser's Stock

. Seller and the Controlling Shareholders hereby represent and warrant to the Purchaser and covenant and agree to be bound by the terms and conditions set out below regarding Purchaser's Stock.

(a) Seller and the Controlling Shareholders are each capable of evaluating the merits and risks of its investment in Purchaser's Stock hereunder. The Seller and each Controlling Shareholder is an "accredited investor" as defined in Rule 501 of Regulation D promulgated pursuant to the Securities Act. The Seller and the Controlling Shareholders are each taking Purchaser's Stock for their own account and not with a view to or for sale in connection with any distribution of such securities as such terms are defined under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "**Securities Act**"). The Seller and the Controlling Shareholders have each reviewed Purchaser's Annual Report on Form 10-K for the year ended December 31, 2010 and any Form 8-Ks filed subsequent to December 31, 2010 and prior to the date of this Agreement and the proxy statement relating to Purchaser's 2011 annual meeting of stockholders (the "**Purchaser's SEC Reports**"). The Seller and the Controlling Shareholders are each familiar with the business and financial condition, properties, operations and prospects of Purchaser and has had the opportunity to discuss Purchaser's business and financial condition, properties,

operations and prospects with Purchaser's management and to ask questions of officers of Purchaser, which questions, if any, were answered to their satisfaction.

(b) The Seller and the Controlling Shareholders each understands that (i) Purchaser's Stock will be "restricted securities" under the applicable federal securities laws, (ii) that the Securities Act provides in substance that such shareholder may dispose of Purchaser's Stock only pursuant to an effective registration statement under the Securities Act or in a transaction exempt from the registration requirements of the Securities Act, (iii) that Purchaser has no obligation or intention to register the sale of Purchaser's Stock pursuant to the Securities Act, and that, accordingly, the Seller and the Controlling Shareholders may be required to bear the economic risk of the investment in Purchaser's Stock for a period of time, and (iv) Purchaser's Stock shall be subject to appropriate stop-transfer instructions to be given by Purchaser to its transfer agents and shall have endorsed thereon a legend substantially as follows:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE OR ELECTRONIC ENTRY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER ANY APPLICABLE STATE LAW AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION UNDER THE ACT OR SUCH APPLICABLE STATE LAW UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE THEREUNDER UNLESS THE BUYER HAS BEEN FURNISHED WITH AN OPINION OF COUNSEL, WHICH OPINION AND COUNSEL SHALL BE REASONABLY SATISFACTORY TO THE BUYER, THAT REGISTRATION UNDER THE ACT IS NOT REQUIRED.

(c) None of the Seller or the Controlling Shareholders, or any of their respective affiliates, (i) are parties to any agreement or plan that provides for dissolution of the Seller or (ii) are parties to any agreement or plan that provides for a pro rata or similar distribution of any of Purchaser's Stock to the security holders of the Seller.

(d) The board of directors of the Seller has not and will not, adopt resolutions or otherwise approve any dissolution of the Seller or a pro rata or similar distribution of any of Purchaser's Stock prior to one year from the date hereof.

(e) The transactions contemplated by this Agreement are not part of any pre-existing plan or agreement to provide for the distribution of any of Purchaser's Stock to the security holders of the Seller.

(f) The Seller will not transfer, sell or otherwise distribute Purchaser's Stock prior to six (6) months from the date hereof, unless it shall have delivered to the Purchaser an opinion of counsel, in form and substance and from counsel reasonably satisfactory to the Purchaser, that such transfer, sale or distribution is not a sale under Rule 145 promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended.

(g) Whenever the restrictions imposed by this Section 7.12 shall terminate, as herein provided, the holder of Purchaser's Stock as to which such restrictions have terminated shall be entitled to receive from Purchaser, without expense to Seller (or the Controlling Shareholders), a new certificate not bearing the restrictive legend set forth in this Section 7.12 and not containing any other reference to the restrictions imposed by this Section 7.12.

## ARTICLE VIII

### EMPLOYEES AND EMPLOYEE BENEFITS

#### 8.1 Employment.

(a) Transferred Employees. Prior to the Closing, Purchaser will make an offer of employment (on an "at will" basis) to those Employees identified by Purchaser, after discussions with Seller, on a schedule to be delivered to Seller no later than three (3) Business Days prior to the Closing to commence such employment immediately upon the Closing Date. Each such offer of employment shall be at the same salary or hourly wage rate and position in effect immediately prior to the Closing Date. Such individuals who accept such offer by the Closing Date are hereinafter referred to as the "**Transferred Employees**." Subject to applicable Laws, on and after the Closing Date, Purchaser shall have the right to dismiss any or all Transferred Employees at any time, with or without cause, and to change the terms and conditions of their employment (including compensation and employee benefits provided to them). Schedule 8.1(a) sets forth a list of all Employees and the salary and hourly wage of each Employee.

(b) Excluded Employees. Any Employee who is not offered employment by Purchaser, as set out in Section 8.1(a) above, prior to Closing or who does not accept an offer of employment by Purchaser and commence work with Purchaser immediately after the Closing, in each case pursuant to Section 8.1(a), is hereinafter referred to as an "**Excluded Employee**."

#### 8.2 Standard Procedure

. Seller will file a Form W-2 with respect to any Transferred Employees, and Purchaser will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee only with respect to the portion of the year during which such Employees are employed by the Purchaser that includes the Closing Date, excluding the portion of such year that such Employee was employed by Seller.

#### 8.3 Employee Benefits.

(a) Benefits. As soon as reasonably practicable following the Closing, Purchaser shall provide the Transferred Employees

with benefits under Purchaser's existing employee benefit plans (" **Purchaser Plans** ") provided to similarly situated employees of Purchaser. Each Transferred Employee shall receive prior service credits as to such plans as to their years of employment with Seller. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as requiring any compensation or employee benefit plans, programs or arrangements to continue to be maintained by Purchaser with respect to the Transferred Employees for any specified period after the Closing Date. Notwithstanding the foregoing to the contrary, due to current difference between the employee's contribution to the Seller's health insurance plan and employee's contribution to Purchaser's health insurance plan (the " **Difference** "), Purchaser shall, during the term of employment of each Transferred Employee with Purchaser, increase each Transferred Employee's compensation paid by Purchaser in an amount equal to the Difference.

(b) Accrued Time. Purchaser shall provide Transferred Employees, during calendar year 2012, their accrued and unused vacation and personal time off, for all accrued and unused vacation and personal time off, through the Closing Date. Schedule 8.3(b) sets forth a list of all Employees and the accrued and unused vacation and personal time off, through the Closing Date, of each Employee. In the event that Purchaser does not provide all of such accrued and unused vacation and personal time off to the Transferred Employees on or before December 31, 2012, Purchaser shall reimburse Seller such unused accrued and unused vacation and personal time off.

(c) COBRA. Seller shall be exclusively responsible for complying with COBRA to the extent required by applicable law with respect to its employees (including the Transferred Employees) and their qualified beneficiaries by reason of any such employees' termination of employment with Seller, and Purchaser shall not have any obligation or liability to provide rights under COBRA on account of any such termination of employment.

(d) Vesting of Seller Employee Benefit Plan Benefits. Effective as of the Closing Date, Seller shall cause the Seller's 401 (k) plans in which Transferred Employees were eligible to participate immediately prior to the Closing Date to fully vest such employees' accrued benefit through the Closing Date thereunder.

#### 8.4 Employment Contracts

. Purchaser will enter into an employment contract, basically in the form attached hereto as Exhibit C, with Charles W. Rod which contains a non-competition/non-solicitation period during the term of the employment contract and for a period of one (1) year after the termination of the employment contract. Purchaser may also enter into employment contracts with other Transferred Employees, as determined by Purchaser after discussion with Seller; provided however same shall not be a condition of Closing.

### ARTICLE IX

#### CONDITIONS TO CLOSING

##### 9.1 Conditions Precedent to Obligations of Purchaser

. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Seller and the Controlling Shareholders set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct, as of the date of this Agreement and as of the Closing as though made at and as of the Closing;

(b) Seller and the Controlling Shareholders shall have performed and complied in all respects with all obligations and agreements required in this Agreement to be performed or complied with by it on or prior to the Closing Date, and Purchaser shall have received copies of such corporate resolutions and other documents evidencing the performance thereof as Purchaser may reasonably request;

(c) there shall not have been or occurred any event, change, occurrence or circumstance that, individually or in the aggregate with any such events, changes, occurrences or circumstances, has had or which could reasonably be expected to have a Material Adverse Effect since the Balance Sheet Date;

(d) Purchaser shall have received certificates signed by the President of Seller, in the form attached hereto as Exhibit B, dated the Closing Date, to the effect that each of the conditions specified above in Sections 9.1(a)-(c) have been satisfied in all respects;

(e) no Legal Proceedings shall have been instituted or threatened or claim or demand made against Seller or Purchaser seeking to restrain or prohibit, or to obtain substantial damages with respect to, the consummation of the transactions contemplated hereby, and there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(f) [Intentionally Omitted]

(g) each Person, as mutually determined by Purchaser and Seller, shall have entered into an employment agreement substantially in the form attached hereto as Exhibit C on terms satisfactory to Purchaser, and such employment agreements shall be in full force and effect and all of such persons shall be willing and able to perform in accordance with such employment agreements;

(h) [Intentionally Omitted]

(i) Seller shall have delivered, or caused to be delivered, to Purchaser a duly executed bill of sale in the form attached hereto as Exhibit E;

(j) Purchaser's Environmental Assessment at the properties shall not have revealed any circumstances which could reasonably be expected to result in (1) the criminal prosecution of Seller or any director, officer or employee of Seller under Environmental Laws, (2) any suspension or closure of operations at Seller's properties or facilities or the revocation or termination of any Environmental Permits or (3) any Environmental Costs and Liabilities which, individually or in the aggregate, will or could reasonably be expected to result in a Material Adverse Effect;

(k) [Intentionally Omitted];

(l) Seller shall have delivered, or caused to be delivered, to Purchaser a duly executed assignment and assumption agreement in the form of Exhibit F hereto;

(m) [Intentionally Omitted];

(n) Seller shall have delivered all instruments and documents necessary to release any and all Liens on the Purchased Assets, including appropriate UCC financing statement amendments (termination statements);

(o) Seller shall have delivered to Purchaser minutes of its shareholders and board of directors authorizing, approving and adopting the Agreement and authorizing, empowering and directing Seller's officers to execute, deliver and cause the performance of the Agreement and all other documents contemplated therein, in the form attached hereto as Exhibit I;

(p) Seller shall have delivered Seller's Disclosure Schedules Letter to Purchaser in the form attached hereto as Exhibit G; and

(q) Seller shall have delivered, or caused to be delivered, to Purchaser such other documents as Purchaser may reasonably request.

## 9.2 Conditions Precedent to Obligations of Seller

. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Seller in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct, as of the date of this Agreement and as of the Closing as though made at and as of the Closing;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date;

(c) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(d) Purchaser shall have delivered, or caused to be delivered, to Seller and to Escrow Agent evidence of the respective wire transfers referred to in Section 3.2 hereof;

(e) Purchaser shall have delivered, or cause to be delivered, to Seller Purchaser's instructions to its transfer agent to issue Purchaser's Stock; and

(f) Purchaser shall have delivered, or caused to be delivered, to Seller a duly executed assignment and assumption agreement in the form attached hereto as Exhibit F hereto.

## ARTICLE X

### INDEMNIFICATION

#### 10.1 Survival of Representations and Warranties

. The representations and warranties of the parties contained in this Agreement, any certificate delivered pursuant hereto or any Seller Document or Purchaser Document shall survive the Closing through and including the first anniversary of the Closing Date; provided, however, that the representations and warranties (a) of Seller set forth in Sections 5.1 (organization and good standing), 5.2 (authorization of agreement), 5.6 (title to purchased assets; sufficiency) and 5.26 (financial advisors) shall survive the Closing indefinitely, (b) of Seller set forth in Sections 5.8 (taxes), 5.13 (employee benefits), and 5.17 (environmental matters) shall survive the Closing until ninety days following the expiration of the applicable statute of limitations with respect to the particular matter that is the subject matter thereof and (c) of Purchaser set forth in Sections

6.1 (organization), 6.2 (authorization of agreement) and 6.5 (financial advisors) shall survive the Closing indefinitely (in each case, the “**Survival Period**”); provided, however, that any obligations under Sections 10.2(a)(i) and 10.2(b)(i) shall not terminate with respect to any Losses as to which the Person to be indemnified shall have given notice (stating in reasonable detail the basis of the claim for indemnification) to the indemnifying party in accordance with Section 10.3(a) before the termination of the applicable Survival Period.

## 10.2 Indemnification.

(a) Subject to Sections 10.1, 10.4 and 10.5 hereof, Seller and Charles W. Rod and Ronald D. Rod, Controlling Shareholders, hereby agree to indemnify and hold Purchaser and its Affiliates and their respective directors, officers, employees, stockholders, members, partners, agents, attorneys, representatives, successors and assigns (collectively, the “**Purchaser Indemnified Parties**”) harmless from and against, and pay to the applicable Purchaser Indemnified Parties the amount of, any and all losses, liabilities, claims, obligations, deficiencies, demands, judgments, damages (including incidental and consequential damages), interest, fines, penalties, claims, suits, actions, causes of action, assessments, awards, costs and expenses (including costs of investigation and defense and attorneys’ and other professionals’ fees), or any diminution in value, whether or not involving a third party claim (individually, a “**Loss**” and, collectively, “**Losses**”):

(i) based upon, attributable to or resulting from the failure of any of the representations or warranties made by Seller in this Agreement or in any Seller Document to be true and correct in all respects at and as of the date hereof and at and as of the Closing Date;

(ii) based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of Seller under this Agreement or in any Seller Document;

(iii) attributable to any Transferred Employee resulting from or based upon (A) any employment-related liability (statutory or otherwise) with respect to employment or termination of employment on or prior to the Closing Date except to the extent caused solely by Purchaser prior to the Closing, and (B) any liability relating to, arising under or in connection with any Benefit Plan, including any liability under COBRA, whether arising prior to, on or after the Closing Date;

(iv) arising out of, based upon or relating to any Excluded Asset or any Excluded Liability or any Excluded Employee;

(v) imposed under or pursuant to any Environmental Laws (including any loss of use of Seller Property or any tangible personal property of Seller or ) arising from or related to any condition, act or omission, by Seller or any predecessor thereof or related to the operations of Seller or any predecessor thereof at any real property currently or formerly owned, operated or leased by Seller or any predecessor thereof, whether known or unknown, accrued or contingent, to the extent existing on or prior to the Closing Date, including any Environmental Costs and Liabilities imposed pursuant to common law associated with a Release of Hazardous Materials; and

(vi) arising from or related to any fees, commissions, or like payments by any Person having acted or claiming to have acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated by this Agreement.

(b) Subject to Sections 10.1 and 10.4, Purchaser hereby agrees to indemnify and hold Seller and its Affiliates and their respective stockholders, directors, officers, employees, members, partners, agents, attorneys, representatives, successors and permitted assigns (collectively, the “**Seller Indemnified Parties**”) harmless from and against, and pay to the applicable Seller Indemnified Parties the amount of, any and all Losses:

(i) based upon, attributable to or resulting from the failure of any of the representations or warranties made by Purchaser in this Agreement or in any Purchaser Document to be true and correct in all respects at the date hereof and as of the Closing Date;

(ii) based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of Purchaser under this Agreement or any Purchaser Document; and

(iii) arising out of, based upon or relating to any Assumed Liability.

(c) The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in this Agreement, any Seller Document or Purchaser Document shall not be affected by any investigation conducted with at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any such covenant or agreements, will not affect the right to indemnification or any other remedy based on such representations, warranties, covenants and agreements.

## 10.3 Indemnification Procedures.

(a) A claim for indemnification for any matter not involving a third party claim may be asserted by notice to the party from whom indemnification is sought; provided, however, that failure to so notify the indemnifying party shall not preclude the indemnified party

from any indemnification which it may claim in accordance with this Article X.

(b) In the event that any Legal Proceedings shall be instituted or that any claim or demand shall be asserted by any third party in respect of which indemnification may be sought under Section 10.2 hereof (regardless of the limitations set forth in Section 10.4) (“**Third Party Claim**”), the indemnified party shall promptly cause written notice of the assertion of any Third Party Claim of which it has knowledge which is covered by this indemnity to be forwarded to the indemnifying party. The failure of the indemnified party to give reasonably prompt notice of any Third Party Claim shall not release, waive or otherwise affect the indemnifying party’s obligations with respect thereto except to the extent that the indemnifying party can demonstrate actual loss and prejudice as a result of such failure. Subject to the provisions of this Section 10.3, the indemnifying party shall have the right, at its sole expense, to be represented by counsel of its choice, which must be reasonably satisfactory to the indemnified party, and to defend against, negotiate, settle or otherwise deal with any Third Party Claim which relates to any Losses indemnified against by it hereunder; provided that the indemnifying party shall have acknowledged in writing to the indemnified party its unqualified obligation to indemnify the indemnified party as provided hereunder. If the indemnifying party elects to defend against, negotiate, settle or otherwise deal with any Third Party Claim which relates to any Losses indemnified against by it hereunder, it shall within five (5) days of the indemnified party’s written notice of the assertion of such Third Party Claim (or sooner, if the nature of the Third Party Claim so requires) notify the indemnified party of its intent to do so; provided that the indemnifying party must conduct its defense of the Third Party Claim actively and diligently thereafter in order to preserve its rights in this regard. If the indemnifying party elects not to defend against, negotiate, settle or otherwise deal with any Third Party Claim which relates to any Losses indemnified against by it hereunder, fails to notify the indemnified party of its election as herein provided or contests its obligation to indemnify the indemnified party for such Losses under this Agreement, the indemnified party may defend against, negotiate, settle or otherwise deal with such Third Party Claim. If the indemnified party defends any Third Party Claim, then the indemnifying party shall reimburse the indemnified party for the expenses of defending such Third Party Claim upon submission of periodic bills. If the indemnifying party shall assume the defense of any Third Party Claim, the indemnified party may participate, at his or its own expense, in the defense of such Third Party Claim; provided, however, that such indemnified party shall be entitled to participate in any such defense with separate counsel at the expense of the indemnifying party if (i) so requested by the indemnifying party to participate or (ii) in the reasonable opinion of counsel to the indemnified party a conflict or potential conflict exists between the indemnified party and the indemnifying party that would make such separate representation advisable; and provided, further, that the indemnifying party shall not be required to pay for more than one such counsel (plus any appropriate local counsel) for all indemnified parties in connection with any Third Party Claim. Each party hereto agrees to provide reasonable access to each other party to such documents and information as may reasonably be requested in connection with the defense, negotiation or settlement of any such Third Party Claim. Notwithstanding anything in this Section 10.3 to the contrary, neither the indemnifying party nor the indemnified party shall, without the written consent of the other party, settle or compromise any Third Party Claim or permit a default or consent to entry of any judgment unless the claimant (or claimants) and such party provide to such other party an unqualified release from all liability in respect of the Third Party Claim. If the indemnifying party makes any payment on any Third Party Claim, the indemnifying party shall be subrogated, to the extent of such payment, to all rights and remedies of the indemnified party to any insurance benefits or other claims of the indemnified party with respect to such Third Party Claim.

(c) After any final decision, judgment or award shall have been rendered by a Governmental Body of competent jurisdiction and the expiration of the time in which to appeal therefrom, or a settlement shall have been consummated, or the indemnified party and the indemnifying party shall have arrived at a mutually binding agreement, in each case with respect to an Third Party Claim hereunder, the indemnified party shall forward to the indemnifying party notice of any sums due and owing by the indemnifying party pursuant to this Agreement with respect to such matter and the indemnifying party shall pay all of such remaining sums so due and owing to the indemnified party in accordance with Section 10.5.

#### 10.4 Limitations on Indemnification for Breaches of Representations and Warranties.

(a) An indemnifying party shall not have any liability under Section 10.2(a)(i) or Section 10.2(b)(i) hereof unless the aggregate amount of Losses incurred by the indemnified parties and indemnifiable thereunder based upon, attributable to or resulting from the failure of any of the representations or warranties to be true and correct exceeds \$50,000.00 (the “**Basket**”) and, in such event, the indemnifying party shall be required to pay the entire amount of all such Losses; provided that the Basket limitation shall not apply to Losses related to the failure to be true and correct of any of the representations and warranties set forth in Sections 5.1 (organization and good standing), 5.2 (authorization of agreement), 5.6 (title to purchased assets; sufficiency), 5.8 (taxes), 5.13 (employee benefits), 5.17 (environmental matters) and 5.26 (financial advisors) and 6.1 (organization), 6.2 (authorization of agreement) and 6.5 (financial advisors) of this Agreement.

(b) Neither Seller nor Purchaser shall be required to indemnify any Person under Section 10.2(a)(i) or 10.2(b)(i) for an aggregate amount of Losses exceeding \$2,800,000 (the “**Cap**”) in connection with Losses related to the failure to be true and correct of any of the representations or warranties of Seller or Purchaser, respectively; provided, that there shall be no Cap with respect to Losses related to the failure to be true and correct of any of the representations or warranties contained in Sections 5.1 (organization and good standing), 5.2 (authorization of agreement), 5.6 (title to purchased assets; sufficiency), 5.8 (taxes), 5.13 (employee benefits), 5.17 (environmental matters) and 5.26 (financial advisors) and 6.1 (organization), 6.2 (authorization of agreement) and 6.5 (financial advisors) of this Agreement.

(c) For purposes of determining the failure of any representations or warranties to be true and correct, the breach of any covenants or agreements, and calculating Losses hereunder any materiality or Material Adverse Effect qualifications in the representations, warranties, covenants and agreements shall be disregarded.

#### 10.5 Indemnity Escrow

. On the Closing Date, Purchaser shall, on behalf of Seller, pay to Wells Fargo Bank, N.A., as agent to Purchaser and Seller (the “**Escrow Agent**”), in immediately available funds, to the account designated by the Escrow Agent, an amount equal to \$2,800,000 (the “**Indemnity Escrow Amount**”), in accordance with the terms of this Agreement and the Escrow Agreement, which will be executed at the

Closing, by and among Purchaser, Seller and the Escrow Agent, a copy of which is attached hereto as Exhibit H (the “ **Escrow Agreement** ”). Any payment Seller is obligated to make to any Purchaser Indemnified Parties pursuant to this Article X shall be paid first, to the extent there are sufficient funds in the Indemnity Escrow Account, by release of funds to the Purchaser Indemnified Parties from the Indemnity Escrow Account by the Escrow Agent within five (5) Business Days after the date notice of any sums due and owing is given to the Seller (with a copy to the Escrow Agent pursuant to the Escrow Agreement) by the applicable Purchaser Indemnified Party and shall accordingly reduce the Indemnity Escrow Amount and, second, to the extent the Indemnity Escrow Amount is insufficient to pay any remaining sums due, then the Controlling Shareholders shall be required to pay all of such additional sums due and owing to the Purchaser Indemnified Parties by wire transfer of immediately available funds within five (5) Business Days after the date of such notice. Following the tenth Business Day after the first anniversary of the Closing Date (the “ **Release Date** ”), the Escrow Agent shall release the Indemnity Escrow Amount (to the extent not utilized to pay Purchaser for any indemnification claim) to Seller, except that the Escrow Agent shall retain an amount (up to the total amount then held by the Escrow Agent) equal to the amount of claims for indemnification under this Article X asserted on or before the Release Date but not yet resolved (“ **Unresolved Claims** ”). The Indemnity Escrow Amount retained for Unresolved Claims shall be released by the Escrow Agent (to the extent not utilized to pay Purchaser for any such claims resolved in favor of Purchaser) upon their resolution in accordance with this Article X and the Escrow Agreement.

#### 10.6 Tax Treatment of Indemnity Payments

. Seller and Purchaser agree to treat any indemnity payment made pursuant to this Article X as an adjustment to the Purchase Price for all income tax purposes. If, notwithstanding the treatment required by the preceding sentence, any indemnification payment under Article X (including this Section 10.6) is determined to be taxable to the party receiving such payment by any Taxing Authority, the paying party shall also indemnify the party receiving such payment for any Taxes incurred by reason of the receipt of such payment and any Losses incurred by the party receiving such payment in connection with such Taxes (or any asserted deficiency, claim, demand, action, suit, proceeding, judgment or assessment, including the defense or settlement thereof, relating to such Taxes).

#### 10.7 Exclusive Remedies

. The remedies set out in this Article X shall be the sole and exclusive remedies of Seller, Purchaser and the Controlling Shareholders (except for any cause of action based on fraudulent acts), for claims arising out of this Agreement. Notwithstanding the foregoing, this Section 10.7 shall not (i) operate to impede the operation of Section 3.3, Section 4.4 or this Article X for the resolution of certain disputes and payment of funds in respect thereof; or (ii) limit the rights of the parties to seek non-monetary equitable remedies (including specific performance or injunctive relief).

### ARTICLE XI

#### TAXES

#### 11.1 Transfer Taxes

. Seller shall (i) be responsible for any and all sales (other than vehicle transfer taxes, and Louisiana sales taxes, if any, which shall be borne by Purchaser), use, stamp, documentary, filing, recording, transfer, real estate transfer, stock transfer, gross receipts, registration, duty, securities transactions or similar fees or taxes or governmental charges (together with any interest or penalty, addition to tax or additional amount imposed) as levied by any Taxing Authority in connection with the transactions contemplated by this Agreement (collectively, “ **Transfer Taxes** ”), regardless of the Person liable for such Transfer Taxes under applicable Law and (ii) timely file or caused to be filed all necessary documents (including all Tax Returns) with respect to Transfer Taxes.

#### 11.2 Prorations

. Seller shall bear all property and ad valorem tax liability with respect to the Purchased Assets if the lien or assessment date arises prior to the Closing Date irrespective of the reporting and payment dates of such taxes. All other real property taxes, personal property taxes, or ad valorem obligations and similar recurring taxes and fees on the Purchased Assets for taxable periods beginning before, and ending after, the Closing Date, shall be prorated between Purchaser and Sellers as of the Closing Date. Seller shall be responsible for all such taxes and fees on the Purchased Assets accruing during any period up to and including the Closing Date. Purchaser shall be responsible for all such taxes and fees on the Purchased Assets accruing during any period after the Closing Date. With respect to Taxes described in this Section 11.2, Seller shall timely file all Tax Returns due before the Closing Date with respect to such Taxes and Purchaser shall prepare and timely file all Tax Returns due after the Closing Date with respect to such Taxes. If one party remits to the appropriate Taxing Authority payment for Taxes, which are subject to proration under this Section 11.2 and such payment includes the other party’s share of such Taxes, such other party shall promptly reimburse the remitting party for its share of such Taxes.

#### 11.3 Cooperation on Tax Matters

. Purchaser and Seller shall furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other filings relating to Tax matters, for the preparation for any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters.

### ARTICLE XII

## MISCELLANEOUS

### 12.1 Expenses

. Except as otherwise provided in this Agreement, each of Seller, Controlling Shareholders and Purchaser shall bear their own expenses, including, but not limited to, legal counsel, accountants and consultants, incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby. Further, fees and distributions to legal counsel, accountant and consultants will not be accrued in the Financial Statements or included in the calculation of Net Working Capital or Closing Working Capital or Final Working Capital.

### 12.2 Specific Performance

. Seller acknowledges and agrees that the breach of this Agreement would cause irreparable damage to Purchaser and that Purchaser will not have an adequate remedy at law. Therefore, the obligations of Seller under this Agreement, including Seller's obligation to sell the Purchased Assets to Purchaser, shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise.

### 12.3 Submission to Jurisdiction; Consent to Service of Process

(a) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any federal or state court located within Houston, County of Harris, State of Texas over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such action brought in such court or any defense of inconvenient forum for the maintenance of such action. Each of the parties hereto agrees that a judgment in any such action may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the delivery of a copy thereof in accordance with the provisions of Section 12.6.

(d) Neither the Survival Period set out in Section 10.1 or the limitations set out in Section 10.4 shall not, in any way, limit any cause of action based on fraud.

### 12.4 Entire Agreement; Amendments and Waivers

. This Agreement (including the Schedules and Exhibits) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

### 12.5 Governing Law

. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State.

### 12.6 Notices

. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission) or (iii) one business day following the day sent by a nationally recognized overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to Seller and/or to Controlling Shareholders, to:

Charles W. Rod, President



C.W. Rod Tool Company, Inc.  
15050 Northgreen Boulevard  
Houston, Texas 77032  
Facsimile: (936) 539-6113

With a copy to:

Peter Workin  
7500 San Felipe, Suite 750  
Houston, Texas 77063  
Facsimile: (800) 403-3780

If to Purchaser, to:

David R. Little, CEO  
DXP Enterprises, Inc.  
7272 Pinemont  
Houston, Texas 77040  
Facsimile: (713) 996-4701

With a copy to:

Looper, Reed & McGraw  
1300 Post Oak Boulevard, Suite 2000  
Houston, Texas 77056  
Facsimile: (713) 986-7100  
Attention: Gary A. Messersmith

#### 12.7 Severability

. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

#### 12.8 Binding Effect; Assignment

. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void; provided, however, that Purchaser may assign this Agreement and any or all rights or obligations hereunder (including, without limitation, Purchaser's rights to purchase the Purchased Assets and assume the Assumed Liabilities and Purchaser's rights to seek indemnification hereunder) to any Affiliate of Purchaser, any Person from which it has borrowed money or any Person to which Purchaser or any of its Affiliates proposes to sell all or substantially all of the assets relating to the Business. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

#### 12.9 Non-Recourse

. No past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of Purchaser or its Affiliates shall have any liability for any obligations or liabilities of Purchaser under this Agreement or the Purchaser Documents of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby, except any fraudulent actions by such parties.

#### 12.10 Counterparts

. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Any signature hereto delivered by a party by facsimile or electronic transmission shall be deemed to be an original signature hereto.

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

Purchaser:

DXP Enterprises, Inc.

By: /s/Kent Yee  
Kent Yee, Executive Vice President

Seller:

C.W. Rod Tool Company, Inc.

By: /s/Charles W. Rod  
Charles W. Rod, President

Controlling Shareholders:

/s/Charles W. Rod

Charles W. Rod

/s/Ronald D. Rod

Ronald D. Rod

## EXHIBIT A

### LEASE AGREEMENT [TEXAS ONLY]

#### [NEED TO DETERMINE PROPER FORM FOR LOUISIANA]

**THIS LEASE AGREEMENT** ("Lease") is made to be effective the 30<sup>th</sup> day of December, 2011, by and between \_\_\_\_\_, LLC, a Texas limited liability company, whose address for notice purposes is located at \_\_\_\_\_, Texas \_\_\_\_\_ ("Landlord") and **DXP ENTERPRISES, INC.**, a Texas corporation, whose address for notice purposes is located at 7272 Pinemont, Houston, Texas 77040, Attn: David R. Little, CEO (the "Tenant"), who hereby mutually covenant and agree as follows:

#### I. GRANT AND LEASE TERM

1.1 **Grant.** Landlord, for and in consideration of the rents herein reserved and of the covenants and agreements herein contained on the part of the Tenant to be performed, hereby leases to Tenant, and Tenant hereby lets from Landlord, the land located at \_\_\_\_\_, \_\_\_\_\_, Texas \_\_\_\_\_ (the "Land") and the \_\_\_\_\_ square foot building constructed thereon (such Building and improvements, being herein called the "Building" and, together with the Land, being herein called the "Leased Premises").

1.2 **Term.**

1.2.1 The term of the Lease (the "Initial Lease Term") shall commence effective on December 30, 2011 (hereinafter sometimes referred to as "Commencement Date") and shall end on December 29, 2016, unless sooner terminated as herein set forth.

1.2.2 At the end of the Initial Lease Term, the Lease may be extended for periods of one (1) year each ("Extension Terms") if at least ninety (90) days prior to the end of the Initial Lease Term, or at least ninety (90) days prior to the end of each Extension Term during which the Lease is in force, Tenant shall give Landlord notice of extension of this Lease, in which event this Lease will be extended at the end of the Initial Lease Term or at the end of any Extension Term thereafter, as specified in the notice, if the amount of rent is agreed to pursuant to Section 5.1. The Initial Lease Term and all Extension Terms shall be referred to herein as the "Lease Term".

#### II. POSSESSION

2.1 **Possession.** Landlord shall have no obligation to Tenant or to do any work in or to the Leased Premises except as otherwise set out herein. Tenant accepts the Leased Premises "as-is". provided, however, Tenant shall not be required to repair, correct, modify or replace any condition or defect existing on the Leased Premises before the Commencement Date.

#### III. PURPOSE

3.1 **Purpose.** The Leased Premises shall only be used and occupied in connection with the operation of its business of the distribution and sales of industrial cutting tools and related services and all uses made by C.W. Rod Tool Company, Inc. during its previous tenancy of the Leased Premises.

#### IV. PROHIBITED USES

4.1 **Uses Prohibited.** Tenant shall not use or occupy the Leased Premises, contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto; or in any manner which would violate any certificate of occupancy affecting the same, or which would cause structural injury to the Building, or which would constitute a public or private nuisance or waste.

#### V. RENT

5.1 **Rent.** Beginning with the Commencement Date, Tenant shall pay to Landlord, until otherwise notified in writing by Landlord, as rent for the Leased Premises, at such place or places as Landlord may designate in writing from time to time, the sum of Eight Thousand And No/100 Dollars (\$8,000.00) each month in advance on or before the tenth (10th) day of each calendar month included within the Term, without deduction, set off, discount or abatement in lawful money of the United States. Notwithstanding the foregoing, sixty (60) days before the end of the Initial Lease and each Extension Term, the parties shall use their good faith efforts to agree on the monthly rent for the forthcoming Extension Term. If an agreement as to the monthly rent for any Extension Term is not agreed upon then the term of the Lease shall not be extended.

5.2 **Interest on Late Payments.** Each and every installment of rent and each and every payment of other charges hereunder which shall not be paid within ten (10) days of when the same is due shall bear interest at the rate of ten percent (10%) per annum, from the date when the same is payable pursuant to the terms of this Lease until the same shall be paid to Landlord.

#### VI. INSURANCE

6.1 **Kinds and Amounts.** Tenant shall procure and maintain policies of insurance, at its own cost and expense, insuring:

(a) The Building and all improvements under a fire and extended coverage insurance policy in an amount equal to the

reasonable replacement value of the Building. Such policy shall include Landlord as additional insured and further shall include any mortgagee as an additional insured, as their interest may appear.

- (b) Tenant under a commercial general liability insurance with respect to the Leased Premises from all claims, demands or actions for injury or death of any person covered by a standard CGL policy in an amount of not less than \$1,000,000.00, for injury to or death to any one (1) person and in an amount of not less than \$2,000,000.00 for injuries or death to persons in any one (1) accident and in an amount not less than \$2,000,000.00 for damage to property. Landlord shall be named as an additional insured on said insurance.
- (c) All Tenant's contents, trade fixtures, equipment, furniture and furnishings in the Leased Premises under casualty coverage insurance.

6.2 **Forms of Insurance.** The aforesaid insurance shall be in companies and in form, substance and amount (where not stated above) reasonably satisfactory to Landlord. The aforesaid insurance shall not be subject to cancellation except after at least thirty (30) days' prior written notice to Landlord. Copies of the insurance policies (or certificates thereof reasonably satisfactory to Landlord) together with satisfactory evidence of payment of the premiums thereon, shall be deposited with Landlord on the Commencement Date and renewals thereof not less than thirty (30) days prior to the end of the term of each such coverage.

6.3 **Mutual Waiver of Subrogation Rights.** Landlord and Tenant hereby waive all claims for recovery from the other for any loss or damage to any of its property to the extent covered by insurance or which would be covered by insurance required to be carried hereunder. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier for any such loss or damage.

## VII. DAMAGE OR DESTRUCTION

7.1 **Damage or Destruction to the Leased Premises.** If the Leased Premises are destroyed this Lease shall terminate. If the Leased Premises are partially destroyed so as to become unreasonably unfit for occupancy, or if the Leased Premises shall be so badly damaged that is cannot be repaired within sixty (60) days after the date such damage occurs, then this Lease may thereupon be canceled by Tenant, effective as of the date of said damage or destruction, and rent shall be prorated to the date of cancellation; but if any such damage is capable of repair in conformance with all applicable laws and ordinances within sixty (60) days after the date of such damage, the rent payable by Tenant shall abate in the ratio which the damaged or untenable portion of the Leased Premises bears to the whole from the date of damage to the date of completion of repairs. If the damage is capable of repair within sixty (60) days, then Tenant shall proceed to repair and rebuild the Leased Premises on the same plan and design as existed immediately before such damage or destruction occurred, subject to such delays as may be reasonably attributable to governmental restrictions or other causes beyond the reasonable control of Tenant such as Tenant's inability to obtain the materials or labor. Materials used in repair shall be as nearly like original materials as may then be reasonably procured in regular channels of supply. All the proceeds of the insurance policies maintained by Tenant hereunder shall be paid directly to Landlord in trust. Landlord shall release to Tenant the insurance proceeds paid to Landlord pursuant to Section 6.1 in installments as the repairs, restoration and rebuilding progress, subject to ten percent (10%) retainage until such work is fully completed and paid for. If such proceeds are insufficient, Tenant shall provide any additional funds required for such repairs, restoration and rebuilding. If this Lease is terminated by Tenant, Landlord shall retain all insurance proceeds paid or payable to Landlord pursuant to Section 6.1.

## VIII. CONDEMNATION

8.1 **Taking.** If the whole of the Leased Premises shall be taken on condemnation for a public or quasi-public use or purpose by a competent authority, or if such a portion of the Leased Premises shall be so taken that as a result thereof the balance cannot be used for the same purpose as expressed in Article III, then in either of such events, the Lease shall automatically terminate upon delivery of title to the condemning authority, and any award, compensation or damages (hereinafter sometimes called the "award"), shall be paid to and be the sole property of Landlord whether such award shall be made as compensation for diminution of the value of the leasehold or the fee of the Leased Premises or otherwise and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such award. Tenant shall continue to pay rent until the Lease Term is terminated and any amounts prepaid by Tenant shall be adjusted between the parties. Notwithstanding the foregoing, any compensation specifically awarded to Tenant for its personal property or moving costs shall be the property of Tenant.

8.2 **Partial Taking.** If only a part of the Leased Premises shall be so taken or condemned, and as a result thereof the balance of the Leased Premises can be used for the same purpose as expressed in Article III, this Lease shall not terminate and Landlord shall repair and restore the Leased Premises and all improvements thereon within sixty (60) days following delivery of title to the condemning body. Any portion of the award which had not been expended by Landlord for such repairing or restoration shall be retained by Landlord as Landlord's sole property. If fifty percent (50%) or more of the Building shall be so taken or condemned, this Lease shall terminate upon such taking. In such event, the award shall be paid to and be the sole property of Landlord. The rent shall be equitably abated based upon delivery of title to the condemning body. Notwithstanding the foregoing, any compensation specifically awarded to Tenant for its personal property or moving costs shall be the property of Tenant.

## IX. MAINTENANCE, COMPLIANCE WITH LAWS AND REGULATIONS

9.1 **Responsibility for Repair, Maintenance and Upkeep of Buildings and Improvements.** Landlord shall maintain, at Landlord's expense, in good condition and repair and replace, as may be necessary, to a standard at least equal to the condition on the Commencement Date the foundation, structural exterior, interior load-bearing walls, roof structure of the Building and parking lot on the Land. Tenant agrees, at Tenant's expense to keep, repair and maintain in generally the same condition that exists on the Commencement Date the portions of the Building which are not included in Landlord's obligations in the preceding sentence. Tenant shall be responsible for the

painting and upkeep of the interior walls and for the condition and repair of all doors, openings, locks and passage ways. Tenant shall keep and maintain the parking lot and all of the grounds clean, neat, mowed and free of trash and debris in generally the same condition that exists on the Commencement Date. Tenant shall not store combustibles or explosives in, on or near the Leased Premises in such manner as would cause danger to the Leased Premises or which would prevent or impair the availability of insurance coverage.

9.2 **Utilities**. Tenant shall be solely responsible for the payment of all utilities used or consumed by Tenant.

9.3 **Ad Valorem Taxes**. Tenant shall timely pay all ad valorem taxes assessed against the Leased Premises, including the Land, Buildings, improvements and personal property owned by Landlord and provide Landlord evidence of such payment. Further, Tenant shall pay all ad valorem taxes assessed against any personal property owned by Tenant and placed in or on the Leased Premises. Landlord shall provide Tenant with the tax statement issued by the taxing authority or authorities within ten (10) days of the receipt of such statement(s). Tenant may, at its own expense, contest any tax assessment regarding the Leased Premises. Landlord shall forward to Tenant, within ten (10) days from receipt, each annual tax valuation of the Leased Premises issued by the applicable taxing authority or authorities. Landlord shall execute all necessary documents to authorize Tenant to act as Landlord's agent for said tax assessment process.

9.4 **Surrender**. At the end or other termination of this Lease Agreement, Tenant shall deliver up the Land with the Building thereon in good repair and condition, less any damage or destruction by fire or other casualty or act of God, ordinary wear and tear, decay, depreciation and obsolescence being excepted.

9.5 **Compliance with Laws**. Tenant shall comply with all laws, regulations, ordinances and legal requirements of public officials (hereinafter "Laws") which shall, with respect to the Leased Premises or the use, occupancy, operation or condition thereof, impose any duty upon Landlord or Tenant, regardless of whether the same requires the making of any additions, alterations, installations or improvements in or to the Leased Premises. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to repair, correct, modify, remove or take any similar action as to any condition, defect or violation existing before the Commencement Date; rather Landlord shall have such compliance obligations.

9.6 **Alterations**. Tenant shall not make any additions, alterations, installations or improvements in or to the Leased Premises to the extent same are structural in nature without Landlord's prior written consent, which consent shall not be unreasonably withheld, and then only in accordance with all applicable provisions of this Lease. Landlord shall have the right (a) to specify and/or approve Tenant's plans and specifications and contractors for the work and (b) to require that Tenant furnish, or cause to be furnished, such insurance with respect thereto as Landlord shall specify. Upon completion of any work by or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord may require (including without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work. In making any alterations, Tenant shall be responsible for complying with all laws which may become applicable as to such alterations. Provided, however, Tenant may add fixtures to the Leased Premises and may upon vacating the Leased Premises remove such fixtures. If the fixtures are removed, the damages caused by said removal shall be repaired by Tenant.

## X. ASSIGNMENT AND SUBLETTING

10.1 **Consent Required**. Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, (a) assign or convey this Lease or any interest under it; (b) allow any lien upon Tenant's interest by operation of law; (c) sublet the Leased Premises or any part hereof; or (d) permit the use or occupancy of the Leased Premises or any part thereof by anyone other than Tenant.

10.2 **Other Transfer of Lease**. Tenant shall not allow or permit any transfer of this Lease, or any interest hereunder, by operation of law, or convey, mortgage, pledge, or encumber this Lease or any interest herein.

## XI. LIENS AND ENCUMBRANCES

11.1 **Encumbering Title**. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Leased Premises, nor shall the interest or estate of Landlord in the Leased Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Any claim to, or lien upon, the Leased Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall be subject and subordinate to the paramount title and rights of Landlord in and to the Leased Premises.

11.2 **Contest**. Tenant shall not permit the Leased Premises to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Leased Premises by, or at the direction or sufferance of Tenant; provided, however, that Tenant shall have the right to contest in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Tenant shall give to Landlord such security as may be deemed satisfactory to Landlord to insure payment thereof (and to prevent any sale, foreclosure, or forfeiture of the Leased Premises by reason of non-payment thereof); provided further, however, that on final determination of the lien or claim for lien, Tenant shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and the judgment satisfied.

## XII. ENVIRONMENTAL INDEMNITY

12.1 During the entire term of the Lease, Tenant agrees to conduct its operations on the Leased Premises in compliance with all local, state and federal laws and regulations, including without limitation, all laws and regulations that pertain to the transport, handling, storage and disposal of petroleum and other hydrocarbon products, by-products and wastes and other hazardous substances. Tenant hereby agrees to indemnify Landlord and hold it harmless from and against any and all claims, suits, administrative actions or other causes of action asserted or

brought against Landlord related solely to Tenant's use of or operations on the Leased Premises during the period Tenant operated on the Leased Premises (hereinafter collectively referred to as the "Action"), regardless of whether the Action is asserted or brought by any private person or entity, any municipality or state or federal regulatory agency or body. Without limiting the generality of the foregoing, Tenant expressly agrees and acknowledges that the scope of this indemnity shall include any claim, suit or action instituted against Landlord by the U. S. Environmental Protection Agency ("E.P.A.") (or any Texas State agency acting as local supervisory or enforcing agent for the E.P.A.), and based upon any provision of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, or any Texas statute pertaining to Tenant's storage, transportation, handling or disposal of hazardous wastes and substances (collectively, "Environmental Laws"). In the event that any the Action is asserted or brought against Landlord as set out above, Tenant shall immediately (and continuously at all times prior the dismissal of the Action or the rendering of a final, non-appealable fine or judgment in the Action) undertake the defense of Landlord's interests through counsel engaged by Tenant and reasonably approved by Landlord. Tenant shall be solely responsible for the costs of any final, non-appealable fine or judgment in the Action as well as the costs of all attorney's fees, administrative fees and court costs. Notwithstanding the foregoing, Tenant shall in no event be required to indemnify Landlord from (i) the negligence, willful misconduct, violation of law or breach of contract by Landlord or any entity for whom Landlord is legally responsible or (ii) any Action that relates to matters, conditions or events that existed or occurred prior to the Commencement Date.

### **XIII. INDEMNITY AND WAIVER**

13.1 **Indemnity**. Tenant will protect, indemnify and save harmless Landlord, his beneficiaries, agents, and employees from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including , without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Landlord by reason of (a) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Leased Premises or resulting from any act or omission of Tenant or anyone claiming by, through or under Tenant prior to the termination or expiration of this Lease (including, but purposes of this clause (a), any act or omission of any employee, agent or contractor of Tenant or anyone claiming by, through or under Tenant); (b) any failure on the part of Tenant to perform or comply with any of the terms and provisions of this Lease; or (c) performance of any labor or services of the furnishing of any materials or other property in respect of the Leased Premises or any part thereof. SUCH INDEMNIFICATION SHALL NOT APPLY IF DUE TO THE FAULT OR NEGLIGENCE OF LANDLORD. In case any action, suit or proceeding is brought against Landlord that is subject to this indemnity, Tenant will, at Tenant's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended, in either case by counsel reasonably approved by Landlord.

13.2 **Waiver of Certain Claims**. Tenant waives all claims it may have against Landlord for damage or injury to person or property sustained by Tenant or any persons claiming through Tenant or by any occupant of the Leased Premises, or by any other person, resulting from any part of the Leased Premises or any of its improvements, equipment or appurtenances becoming out of repair, or resulting from any accident on or about the Leased Premises or resulting directly or indirectly from any act or neglect of any tenant or occupant of any part of the Leased Premises or of any other person, including Landlord, to the extent permitted by law. THIS SECTION 13.2 SHALL INCLUDE, BUT NOT BY WAY OF LIMITATION, DAMAGE CAUSED BY WATER, STEAM, EXCESSIVE HEAT OR COLD, SEWAGE, GAS, ODORS, OR NOISE, OR CAUSED BY BURSTING OR LEAKING OF PIPES OR PLUMBING FIXTURES, AND SHALL APPLY EQUALLY WHETHER ANY SUCH DAMAGE RESULTS FROM THE ACT OR NEGLIGENCE OF TENANT OR OF OTHER TENANTS, OR OCCUPANTS OR ANY PART OF THE LEASED PREMISES OR OF ANY OTHER PERSON, INCLUDING LANDLORD AND WHETHER SUCH DAMAGE BE CAUSED BY OR RESULT FROM ANYTHING OR CIRCUMSTANCE ABOVE MENTIONED OR REFERRED TO, OR TO ANY OTHER THING OR CIRCUMSTANCE WHETHER OF A LIKE NATURE OR OF A WHOLLY DIFFERENT NATURE. All personal property belonging to Tenant or any occupant of the Leased Premises that is in or on any part of the Leased Premises shall be there at the risk of Tenant or of such other person only, and Landlord shall not be liable for any damage thereto or for the theft or misappropriation thereof.

13.3 **Landlord's Indemnity**. Except to the extent caused by willful malfeasance or gross negligence or breach of this Lease by Tenant or anyone for whom Tenant is legally responsible, Landlord will indemnify and hold Tenant harmless from and against any and all liability, loss, claims, demands, damages or expenses (including reasonable attorneys' fees) due to or arising out of any willful malfeasance or gross negligence or breach of this Lease by, Landlord or anyone for whom Landlord is legally responsible. Landlord shall also indemnify, defend and hold harmless Tenant from and against all claims arising out of any violation of Environmental Laws by Landlord or any prior tenant of the Leased Premises. Landlord's obligations hereunder will survive the expiration or early termination of the Lease Term.

### **XIV. RIGHTS RESERVED TO LANDLORD**

14.1 **Rights Reserved to Landlord**. Without limiting any other rights reserved or available to Landlord under this Lease, at law or in equity, Landlord, on behalf of himself and his agents reserves the following rights to be exercised at Landlord's election:

- (a) To inspect the Leased Premises and to make repairs, additions, alterations, installations and improvements to the Leased Premises, specifically including, but without limiting the generality of the foregoing, to make repairs, additions, alterations, installations or improvements to the mechanical, electrical and other facilities of the Building;
- (b) To show the Leased Premises to prospective purchasers, mortgagees, or other persons having a legitimate interest in viewing the same, and, at any time within ninety (90) days prior to the expiration of the Lease Term, to persons wishing to rent the Leased Premises;
- (c) During the last year of the Lease Term, to place and maintain the usual "For Rent" sign in or on the Leased Premises;
- (d) During the last ninety (90) days of the Lease Term, if during or prior to that time Tenant vacates the Leased Premises,

to decorate, remodel, repair, alter or otherwise prepare the Leased Premises for new occupancy; and

- (e) To place and maintain "For Sale" signs on the Leased Premises, including on the exterior of the Building.

Landlord may reasonably enter upon the Leased Premises for any and all of said purposes and may reasonably exercise any and all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession of the Leased Premises, and without being liable in any manner to Tenant.

## XV. QUIET ENJOYMENT

15.1 **Quiet Enjoyment**. So long as Tenant is not in default under the covenants and agreements of this Lease, Tenant's quiet and peaceable enjoyment of the Leased Premises shall not be disturbed or interfered with by Landlord or by any person claiming by, through or under Landlord.

## XVI. SUBORDINATION OF LEASE

16.1 **Subordination**. The rights and interest of Tenant under this Lease shall be subject and subordinate to any first mortgage or first trust deed that hereafter may be placed upon the Leased Premises by Landlord and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof only if the holder of such mortgage, deed of trust and/or ground lease executes and delivers an agreement in commercially reasonable form which provides that Tenant's rights under this Lease shall be recognized and its right to possession of the Leased Premises shall not be disturbed, notwithstanding any exercise of the rights of such holder(s), so long as Tenant is not in default after notice and expiration of the applicable cure period under this Lease. Tenant shall execute and deliver whatever instruments may be reasonably required for such purposes.

## XVII. SURRENDER

17.1 **Surrender**. Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon the termination of Tenant's right to possession of the Leased Premises, Tenant will at once surrender and deliver up the Leased Premises, together with all improvements thereon, to Landlord in good condition and repair, excepting reasonable wear and tear, damage caused by Acts of God, damage covered by the insurance provided for in this Lease and Landlord's failure to comply with Landlord's obligations as set out in Section 9.1. All additions, hardware, fixtures, and all improvements, temporary or permanent, in or upon the Leased Premises placed thereby Tenant shall become Landlord's property and shall remain upon the Leased Premises upon termination of this Lease by lapse of time or otherwise, without compensation or allowance or credit to Tenant, unless Landlord in writing at least thirty (30) days prior to termination of the Lease requires their removal at or before the time of such termination of the Lease. If Landlord so requests removal of said additions, hardware, fixtures, and improvements and Tenant does not make such removal at said termination of the Lease, or within ten (10) days after such request, whichever is later, Landlord may remove and deliver the same to any other place of business of Tenant.

17.2 **Removal of Tenant's Property**. Upon the termination of this Lease by lapse of time, Tenant may remove Tenant's trade fixtures; provided, however, that Tenant shall repair any injury or damage to the Leased Premises which may result from such removals. If Tenant does not remove Tenant's trade fixtures from the Leased Premises prior to the end of the Lease Term, whoever ended, Landlord may, at its option, remove the same and deliver the same to any other place of business of Tenant, and Tenant shall pay the cost of such removal (including the repair of any injury or damage to the Leased Premises resulting from such removal), delivery to Landlord on demand, or Landlord may treat such trade fixtures as having been conveyed to Landlord with this Lease as a bill of sale, without further payment or credit by Landlord or Tenant.

17.3 **Holding Over**. Any holding over by Tenant of the Leased Premises after the expiration of this Lease, or after any termination of this Lease or Tenant's right of possession, shall operate and be construed to be a tenancy at sufferance at double the daily rate of rent plus other charges payable hereunder for the Lease Term. Nothing contained in this Section 17.3 shall be construed to give Tenant the right to hold over after the expiration of this Lease, or after any termination of this Lease or Tenant's right of possession, and Landlord may exercise any and all remedies at law or in equity to recover possession of the Leased Premises and/or to recover damages.

## XVIII. DEFAULTS AND REMEDIES

18.1 **Tenant Defaults**. Tenant agrees that any one or more of the following events shall be considered an "Event of Default" as said term is used herein, that is to say, if:

- (a) Tenant shall be adjudged an involuntary bankrupt, or a decree or order approving, as properly filed, a petition or answer filed against Tenant asking reorganization of Tenant under the federal bankruptcy laws as now or hereafter amended, or under the laws of any state, shall be entered, and any such decree or judgment or order shall not have been vacated or set aside within ninety (90) days from the date of the entry or granting thereof; or
- (b) Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to federal bankruptcy laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debts, readjustment of indebtedness, reorganization, arrangements, composition or extension; or
- (c) Tenant shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a

receiver for Tenant or any property of Tenant; or

- (d) The Leased Premises are levied upon by any revenue officer or similar officer only by reason of Tenant; or
- (e) A decree or order appointing a receiver of the property of Tenant shall be made and such decree or order shall not have been vacated or set aside within sixty (60) days from the date of entry or granting thereof; or
- (f) Tenant shall abandon the Leased Premises or vacate the same for sixty (60) days during the Lease Term; or
- (g) Tenant shall default in any payment of rent or in any other payment required to be made by Tenant hereunder when due as herein provided and such default shall continue for five (5) days after the due date thereof; or
- (h) Tenant shall fail to contest the validity of any lien or claimed lien and give security to Landlord to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, and such default continues for thirty (30) days after notice thereof in writing to Tenant; or
- (i) Tenant shall default in keeping, observing or performing any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant specifying such default and the required cure for such default or, if the same cannot reasonably be cured within such thirty (30) day period, if Tenant in good faith commences to cure such breach or noncompliance within such period and then diligently pursues the cure to completion.

Upon the occurrence of an Event of Default, Landlord, at its election, may terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease. Upon termination of the Lease, or upon any termination of the Tenant's right to possession without termination of the Lease, the Tenant shall surrender possession and vacate the Leased Premises immediately, and deliver possession thereof to the Landlord. Tenant hereby grants to the Landlord the full and free right, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for), to enter into and upon the Leased Premises on such event with or without process of law and to repossess the Leased Premises as the Landlord's former estate and to expel or remove the Tenant and any others who may be occupying or within the Leased Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom and without relinquishing the Landlord's rights to rent or any other right given to the Landlord hereunder or by operation of law. Upon termination of the Lease, Landlord shall be entitled to recover as damages, all rent and other sums due and payable by Tenant on the date of termination, plus (1) an amount equal to the value of the rent and other sums provided herein to be paid by Tenant for the residue of the stated Lease Term hereof, less the fair rental value of the Leased Premises for the residue of the stated Lease Term (taking in to account the time and expenses necessary to obtain a replacement tenant or tenants, including expenses hereinafter described relating to recovery of the Leased Premises, preparation for reletting and for reletting itself), and (2) the cost of performing any other covenants to be performed by the Tenant. If the Landlord elects to terminate the Tenant's right to possession only, without terminating the Lease, the Landlord may, at the Landlord's option enter into the Leased Premises, remove the Tenant's signs and other evidences of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating the Lease or releasing the Tenant, in whole or in part, from the Tenant's obligations to pay the rent hereunder for the full Lease Term or from any other of its obligations under this Lease. Landlord may but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms and provisions as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a period greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate or make any repairs, changes, additions, alterations, installations or improvements in or to the Leased Premises that may be necessary or convenient. If and for so long as Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand damages equal to the amount of the rent and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and brokers, commission), to satisfy the rent and other charges herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord on demand any deficiency. Tenant agrees that Landlord may file suit to recover any sums falling due under the provisions of this Section 18.1 from time to time, and need not wait until the expiration of this Lease. If Tenant shall default under subsection (i) hereof, and if such default cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant promptly commences to eliminate the cause of such default, then Landlord shall not have the right to declare the Lease Term ended by reason for such default or to repossess without terminating the Lease so long as Tenant is proceeding diligently and with reasonable dispatch to take all steps and do all work required to cure such default, provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Landlord to declare the Lease Term ended or to repossess without terminating the Lease, and to enforce all of its rights and remedies hereunder for any other default. Notwithstanding anything herein to the contrary, Landlord and Tenant shall exercise reasonable efforts to mitigate damages arising from the default of the other.

18.2 **Landlord Defaults** . If Landlord has breached or failed to comply with any provision of this Lease applicable to Landlord, Tenant will give written notice to Landlord describing the alleged breach or noncompliance. Landlord will not be deemed in default under this Lease if Landlord cures the breach or noncompliance within thirty (30) days after receipt of Tenant's notice or, if the same cannot reasonably be cured within such thirty (30) day period, if Landlord in good faith commences to cure such breach or noncompliance within such period and then diligently pursues the cure to completion. If Landlord breaches or fails to comply with any provision of this Lease applicable to Landlord, and such breach or noncompliance is not cured within the period of time described above, then Tenant may exercise any right or remedy available to Tenant at law or in equity, including but not limited to, the termination of the Lease.

18.3 **Remedies Cumulative** . No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be



considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord or Tenant may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

18.4 **No Waiver**. No delay or omission of Landlord or Tenant to exercise any right or power arising from any default shall impair any such right to power or be construed to be a waiver of any such default or any acquiescence therein. No waiver of any breach of any of the covenants of this Lease shall be construed, taken or held to be a waiver of any other breach, or as a waiver, taken or held to be a waiver of any other breach, or as a waiver, acquiescence in or consent to any further or succeeding breach of the same covenant. The acceptance by Landlord of any payment or rent or other charges hereunder after the termination by Landlord of this Lease or of Tenant's right to possession hereunder shall not, in the absence of agreement in writing to the contrary by Landlord, be deemed to restore this Lease or Tenant's right to possession hereunder, as the case may be, but shall be construed as a payment on account, and not in satisfaction of damages due from Tenant to Landlord.

## XIX. MISCELLANEOUS

19.1 **Estoppel Certificates**. Tenant shall at any time and from time to time upon not less than ten (10) days prior written request from Landlord execute, acknowledge and deliver to Landlord, in form reasonably satisfactory to Landlord and/or Landlord's purchaser mortgagee, a written statement certifying (if true) that Tenant has accepted the Leased Premises, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that the Landlord is not in default hereunder, the date to which the rental and other charges have been paid in advance, if any, and such other accurate certification as may reasonably be required by Landlord or Landlord's purchaser or mortgagee. It is intended that any such statement delivered pursuant to this subsection may be relied upon by any purchaser or mortgagee and their respective successors and assigns.

19.2 **Landlord's Right to Cure**. Landlord may, but shall not be obligated to, cure any default by Tenant (specifically including, but not by way of limitation, Tenant's failure to obtain insurance, make repairs, or satisfy lien claims); and whenever Landlord so elects, all costs and expenses paid by Landlord in curing such default, including without limitation reasonable attorneys' fees, shall be so much additional rent due on the next rent date after such payment together with interest (except in the case of said attorneys' fees), at the rate of twelve percent (12%) per annum, from the date of the advance to the date of repayment by Tenant to Landlord.

19.3 **Amendments Must be in Writing**. None of the covenants, terms or conditions of this Lease to be kept and performed by either party, shall in any manner be altered, waived, modified, changed or abandoned except by a written instrument, duly signed, acknowledged and delivered by both parties.

19.4 **Notices**. All notices to or demands upon Landlord or Tenant desired or required to be given under any of the provisions hereof, shall be in writing. Any notices or demands from Landlord to Tenant shall be deemed to have been duly and sufficiently given three (3) days after mailed by United States registered or certified mail in an envelope properly stamped and addressed to Tenant at the Leased Premises, or at such address as Tenant may theretofore have furnished by written notice to Landlord, any and notices or demands from Tenant to Landlord shall be deemed to have been duly and sufficiently given three (3) days after mailed by United States registered or certified mail in an envelope properly stamped and addressed to Landlord at the address set forth below. Any notice from one party to the other party may be delivered by Federal Express or similar overnight delivery service and shall be deemed duly and sufficiently give one (1) day after delivered to Federal Express or similar overnight delivery service.

19.5 **Short Form Lease**. Neither this Lease nor any short form lease with respect hereto shall be recorded.

19.6 **Time of Essence**. Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

19.7 **Relationship of Parties**. Nothing contained herein shall be deemed to construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of landlord and tenant.

19.8 **Captions**. The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope of intent of the provisions hereof.

19.9 **Severability**. If any terms or provisions of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

19.10 **Law Applicable**. This Lease shall be construed and enforced in accordance with the laws of the State of Texas. All obligations hereunder are performable in Harris County, Texas.

19.11 **Covenants Binding on Successors**. All of the covenants, agreements, conditions and undertakings contained in this Lease shall extend and inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto, the same as if they were in every case specifically named, and wherever in this Lease reference is made to either of the parties hereto, it shall be held to include and apply to, wherever applicable, the heirs, executors, administrators, successors and assigns of such party. Nothing herein contained shall be construed to grant or confer upon any person or persons, firm, corporation or governmental authority, other than the parties hereto, their heirs, executors, administrators, successors and assigns, any right, claim or privilege by virtue of any covenant, agreement, condition or undertaking in this Lease contained.

19.12 **Brokerage**. Tenant warrants that Tenant has had no dealing with any broker or agent in connection with this Lease. Tenant covenants to pay, hold harmless and indemnify Landlord from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any broker or other agent with respect to this Lease or the negotiation thereof.

19.13 **Landlord Means Owner; Liability Limited to Leased Premises**. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the Leased Premises, and in the event of any transfer or transfers of the title to such fee, Landlord herein named (and in case of any subsequent transfer or conveyance, the then grantor) shall be automatically freed and relieved, from and after the date of such transfer or conveyance, of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed.

Tenant agrees that for any amount in excess of \$25,000.00, Landlord's liability under this Lease, and under or with respect to all matters relating to the Leased Premises, shall be limited to Landlord's interest in the Leased Premises and no judgment or other legal process recovered by Tenant, or any person claiming by, through or under Tenant, against Landlord or any person claiming by, through or under Tenant, against Landlord may be satisfied or enforced out of any property other than Landlord's interest in the Leased Premises.

19.14 **Signs**. Tenant shall install no exterior sign, other than the exterior signs existing on the date hereof, without Landlord's reasonable prior written approval of detailed plans and specifications therefor. At the expiration or termination of this Lease, Landlord shall remove all of its signs and restore any damage to the Leased Premises caused by such signs or by the installation or removal thereof.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD** :

\_\_\_\_\_,  
a \_\_\_\_\_

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

**TENANT** :

**DXP ENTERPRISES, INC.,**  
a Texas corporation

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

862804.3

A-



**EXHIBIT B**

**CLOSING CERTIFICATE  
OF SELLER AND CONTROLLING SHAREHOLDERS**

Each of the undersigned hereby certifies as follows to DXP Enterprises, Inc., a Texas corporation (the "Purchaser"), pursuant to Section 9.1(d) of the Asset Purchase Agreement (the "Purchase Agreement") dated as of December 30, 2011 among C.W. Rod Tool Company, Inc., a Texas corporation, the Controlling Shareholders and the Purchaser (each capitalized term not otherwise defined herein shall have the meaning given to such term in the Purchase Agreement):

1. The representations and warranties of the Seller and each of the Controlling Shareholders contained in the Purchase Agreement are true, correct and complete in all respects on and as of the Closing Date.

2. Each and all of the agreements and covenants of the Seller and each of the Controlling Shareholders set forth in the Purchase Agreement to be performed or complied with by the Seller or the Controlling Shareholders on or before the Closing Date pursuant to the Purchase Agreement have been performed or complied in all material respects by Seller and each of the Controlling Shareholders.

3. The resolutions set forth in Exhibit A attached hereto were duly adopted by the board of directors and shareholders of the Seller, and have not been rescinded or otherwise modified as of the delivery of this Closing Certificate to the Purchaser.

Seller:

C W Rod Tool Company, Inc.

By:

Charles W. Rod, President

B-

Controlling Shareholders:

Charles W. Rod

Ronald D. Rod

B-

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EXHIBIT "A"

Resolutions of Shareholders and Directors

Action of the Shareholders  
of  
C. W. Rod Tool Company, Inc.  
Without Meeting

We, the undersigned, being all of the Shareholders of C. W. ROD TOOL COMPANY, INC. (the "Corporation"), do by this instrument in writing consent to the following actions and adopt the following resolutions:

**RESOLVED**, that the form, terms and provisions of the Asset Purchase Agreement (the "Agreement") by and between Corporation as Seller, and DXP Enterprises, Inc. as Purchaser, in connection with the sale of substantially all of the assets of C.W. Rod Tool Company, Inc. has been presented to and approved by the Shareholders;

**RESOLVED FURTHER**, that Charles W. Rod, III , in his capacity as President of the Corporation, be and he is hereby fully authorized, empowered and directed for and on behalf of the Corporation, to execute the Agreement and any and all additional documents necessary in order to consummate said sale of said assets, including, but not limited to bills of sale and assignments, escrow agreements, and leases, the execution and of such instruments or documents by such officer shall be conclusive evidence of his authority to do so, and to execute such other and further instruments as may be necessary or proper to negotiate and conclude said in accordance with the terms of the Agreement, and that Charles W. Rod, III , in his capacity as the Secretary of the Corporation be and he is fully authorized and directed to attest to any and all such instruments, if same be required;

**FURTHER RESOLVED**, that Charles W. Rod, III, in his capacity as President of the Corporation, be and is hereby authorized, in the name of and on behalf of the Corporation, and on behalf of the Corporation, to execute and deliver the Agreement, substantially in the form approved herein, together with such changes as Charles W. Rod, III, in his sole discretion, approves, the execution and delivery thereof by him to be conclusive evidence that the same have been approved by the Shareholders;

**FURTHER RESOLVED** , that the officers of the Corporation are authorized and directed to take those actions necessary to effect the hereinabove described activities of the Corporation.

The resolutions contained herein and the actions contemplated hereby are taken by unanimous written consent of the Shareholders pursuant to Article 6.201 of the Texas Business Organizations Code.

**EXECUTED** effective as of the 30th day of December, 2011.

**SHAREHOLDERS :**

\_\_\_\_\_  
Charles W. Rod, III

\_\_\_\_\_  
Ronald Rod

B-

Action of  
Board of Directors  
of  
C. W. Rod Tool Company, Inc.  
Without Meeting

We, the undersigned, being all of the members of the Board of Directors of C. W. ROD TOOL COMPANY, INC. (the "Corporation"), do by this instrument in writing consent to the following actions and adopt the following resolutions:

**RESOLVED**, that the form, terms and provisions of the Asset Purchase Agreement (the "Agreement") by and between Corporation as Seller, and DXP Enterprises, Inc. as Purchaser, in connection with the sale of substantially all of the assets of C.W. Rod Tool Company, Inc. has been presented to and approved by the Directors;

**RESOLVED FURTHER**, that Charles W. Rod, III , in his capacity as President of the Corporation, be and he is hereby fully authorized, empowered and directed for and on behalf of the Corporation, to execute the Agreement and any and all additional documents necessary in order to consummate said sale of said assets, including, but not limited to bills of sale and assignments, escrow agreements, and leases, the execution and of such instruments or documents by such officer shall be conclusive evidence of his authority to do so, and to execute such other and further instruments as may be necessary or proper to negotiate and conclude said in accordance with the terms of the Agreement, and that Charles W. Rod, III , in his capacity as the Secretary of the Corporation be and he is fully authorized and directed to attest to any and all such instruments, if same be required;

**FURTHER RESOLVED**, that Charles W. Rod, III, in his capacity as President of the Corporation, be and is hereby authorized, in the name of and on behalf of the Corporation, and on behalf of the Corporation, to execute and deliver the Agreement, substantially in the form approved herein, together with such changes as Charles W. Rod, III, in his sole discretion, approves, the execution and delivery thereof by him to be conclusive evidence that the same have been approved by the Directors;

**FURTHER RESOLVED**, that the officers of the Corporation are authorized and directed to take those actions necessary to effect the hereinabove described activities of the Corporation.

The resolutions contained herein and the actions contemplated hereby are taken by unanimous written consent of the Board of Directors pursuant to Section 6.201 of the Texas Business Organizations Code.

**EXECUTED** effective as of the 30th day of December, 2011.

**DIRECTORS :**

\_\_\_\_\_  
Charles W. Rod, III

\_\_\_\_\_  
Ronald Rod

B-

## EXHIBIT C

### EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") by and between DXP Enterprises, Inc., a Texas corporation (the "Company"), and \_\_\_\_\_ (the "Executive") is entered into this \_\_\_\_\_ day of December, 2011 ("the Effective Date"):

#### RECITALS

- A. The Company desires to employ Executive in the capacity set forth on Exhibit "A", pursuant to the provisions of this Agreement; and
- B. The Executive desires employment as an employee of the Company pursuant to the provisions of this Agreement.

#### ARTICLE I.

##### TERMS OF EMPLOYMENT

1.1 Employment. The Company hereby employs the Executive for and during the term hereof in the position set forth on Exhibit "A". The Executive hereby accepts employment under the terms and conditions set forth in this Agreement.

1.2 Duties of Executive. The Executive agrees to devote the Executive's best efforts, abilities, knowledge, experience and full business time to the faithful performance of the duties, responsibilities, and authorities which may be assigned to the Executive. Executive may not engage, directly or indirectly, in any other business, investment, or activity that interferes with Executive's performance of Executive's duties hereunder, or is contrary to the interests of the Company. Executive shall at all times comply with and be subject to such reasonable policies and procedures as the Company may establish from time to time, which will be customary within Company's industry and applicable to all of its employees. Executive acknowledges and agrees that Executive owes a fiduciary duty of loyalty, fidelity and allegiance to act at all times in the best interests of the Company and to do no act which would injure Company's business, its interests, or its reputation.

1.3 Term. This Agreement is entered into in connection with that one certain Asset Purchase Agreement, by and among, Employer, C.W. Rod Tool Company, Inc. ("Seller") and the Controlling Shareholders and shall become effective only upon the Effective Date and shall continue in force and effect for a period of three (3) years unless sooner terminated as provided in Section 2.1 hereof. Unless this Agreement is terminated before the end of its initial term, the term hereof shall be automatically extended for successive monthly terms, unless terminated prior to the expiration of any one monthly term. Except as set out herein, this Agreement may only be renewed or extended by written agreement executed by the Company and the Executive pursuant to mutually acceptable terms and conditions.

1.4 Compensation. The Company shall pay the Executive, as "Compensation" for services rendered by the Executive under this Agreement the following Base plus bonus/commission, if any.

(a) Base. An annual base salary amount as set forth on Exhibit "A", prorated for any partial period of employment ("Base"). Such Base shall be paid in installments in accordance with the Company's regular payroll practices, but not less frequently than bi-weekly.

1.5 Employment Benefits. In addition to the Base payable to the Executive hereunder, the Executive shall be entitled to the following benefits:

(a) Employment Benefits. As an employee of the Company, the Executive shall participate in and receive all benefit plans and programs made available by the Company, as may be in effect from time to time, upon satisfaction by the Executive of the eligibility requirements therefore.

(b) Working Facilities. During the term of this Agreement, the Company shall provide, at its expense, furniture, equipment, supplies and personnel as shall be adequate for the Executive's use in performing Executive's duties and responsibilities under this Agreement.

(c) Business Expenses. The Company shall pay or reimburse for all business related expenses (as defined by the Internal Revenue Code) incurred in connection with the performance of Executive duties. The approval and payment of such expenses shall be in accordance with the Company's regular practices.

(d) Vacation. Executive shall be entitled to the vacation in accordance with the Company's employee manual.

(e) Limitations. Company shall not by reason of Sections 1.4 and 1.5 be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any incentive compensation or employee benefit program or plan, so long as such actions are similarly applicable to covered executives similarly situated. Executive's employment is also subject to the terms and conditions of the Company's employee manuals; provided however to the extent the Company's employee manuals and this Agreement conflict, this Agreement shall control.

#### ARTICLE II.

##### TERMINATION

2.1 Termination. Notwithstanding anything herein to the contrary, this Agreement and the Executive's employment hereunder may be terminated without any breach of this Agreement at any time during the term hereof by reason of and in accordance with the following provisions:

(a) Death. If the Executive dies during the term of this Agreement and while in the employ of the Company, this Agreement shall automatically terminate as of the date of the Executive's death, and the Company shall have no further liability hereunder to the Executive or Executive's estate, except to the extent set forth in Section 2.2(a) hereof.

(b) Disability. If, during the term of this Agreement, the Executive shall be incapable of performing the Executive's duties hereunder, for a period of not less than ninety (90) consecutive days or an aggregate of one hundred twenty (120) days during any period of twelve (12) consecutive calendar months, by reason of becoming Disabled as hereinafter defined, the Company may terminate this Agreement immediately upon written notice to the Executive without any further liability hereunder to the Executive, except as set forth in Section 2.2(b) hereof. For purposes of this Agreement, the Executive shall be deemed "Disabled" when the Company, upon the written report of a qualified physician designated by the Company, shall have reasonably determined that the Executive has become mentally, physically and/or emotionally incapable of performing Executive's duties and services under this Agreement.

(c) Termination by the Company for Cause. Prior to the expiration of the term of this Agreement, the Company may discharge the Executive for cause and terminate this Agreement immediately upon written notice to the Executive without any further liability hereunder to the Executive, except to the extent set forth in Section 2.2(c) hereof. For purposes of this Agreement, a "discharge for cause" shall mean termination of the Executive upon written notice to the Executive limited, however, to one or more of the following reasons:

(1) Conviction of the Executive by a court of competent jurisdiction of a felony or a crime involving moral turpitude;

(2) The Executive's continued failure or refusal to comply with any of the Company's policies, standards, and regulations, which from time to time may be established after not less than thirty (30) days prior written notice and the failure of Executive to cure or cease such failure, refusal or breach as determined, in good faith, by the Company;

(3) The Executive's engaging in conduct amounting to fraud, dishonesty, gross negligence, willful misconduct or conduct that is unprofessional, unethical, or detrimental to the reputation, character or standing of the Company in a material way; or

(4) The Executive's continued failure to faithfully and diligently perform the duties required hereunder or to comply with the provisions of this Agreement after not less than thirty (30) days prior written notice and the failure of Executive to cure or cease such failure, refusal or breach as determined, in good faith, by the Company.

(d) Termination by the Company with Notice. The Company may terminate this Agreement at any time, for any reason, other than as set forth in Subparagraphs (a), (b) or (c) of this Section 2.1, with or without cause, in the Company's sole discretion, upon fifteen (15) days prior written notice to the Executive without any further liability hereunder to the Executive, except to the extent set forth in Section 2.2(d) hereof.

(e) Termination by the Executive for Good Reason. The Executive may terminate this Agreement at any time for Good Reason (as hereinafter defined) in which event the Company shall have no further liability hereunder to the Executive, except to the extent set forth in Section 2.2(e) hereof. For purposes of this Agreement, the term "Good Reason" shall mean, without the Executive's express written consent, the occurrence of any of the following circumstances:

(1) The Company's failure to pay the Executive the Compensation pursuant to Section 1.4 of this Agreement that has not been cured within thirty (30) days after notice of such noncompliance has been given by the Executive to the Company; or

(2) Any failure by the Company to comply with any material provision of this Agreement that has not been reasonably cured within thirty (30) days after notice of such noncompliance has been given by the Executive to the Company.

(f) Termination by the Executive with Notice. The Executive may terminate this Agreement for any reason, in the Executive's sole discretion other than Good Reason, by giving the Company fifteen (15) days prior written notice, in which event the Company shall have no further liability hereunder to the Executive, except to the extent set forth in Section 2.2(f) hereof.

2.2 Compensation upon Termination.

(a) Death. In the event the Executive's employment hereunder is terminated pursuant to the provisions of Section 2.1(a) hereof due to the death of the Executive, the Company shall have no further obligation to the Executive or Executive's estate, except to pay to the Executive's spouse, or if none, to the estate of the Executive any accrued, but unpaid, Base and any vacation or sick leave benefits, which have accrued as of the date of death, but were then unpaid or unused and unpaid business expenses and a full monthly Base. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the death of the Executive.



(b) Disability. In the event the Executive's employment hereunder is terminated pursuant to the provisions of Section 2.1(b) hereof due to Disability of the Executive, the Company shall be relieved of all of its obligations under this Agreement, except to pay the Executive any accrued, but unpaid Base, and vacation or sick leave benefits, which have accrued as of the date on which such Disability is determined, but then remains unpaid and unpaid business expenses. The provisions of the preceding sentence shall not affect the Executive's rights to receive payments under the Company's disability insurance plan, if any. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(c) Termination by the Company for Cause. In the event the Executive's employment hereunder is terminated by the Company for Cause pursuant to the provisions of Section 2.1(c) hereof, the Company shall have no further obligation to the Executive under this Agreement except to pay the Executive any accrued, but unpaid, Base and any vacation or sick leave benefits, which have accrued as of the date of termination of this Agreement, but were then unpaid or unused and unpaid business expenses. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(d) Termination by the Company with Notice. In the event the Executive's employment hereunder is terminated by the Company pursuant to the provisions of Section 2.1(d) hereof, the Executive shall be entitled to receive (i) any accrued, but unpaid, Base and any vacation or sick leave benefits, which have accrued as of the date of termination of this Agreement, but were then unpaid or unused and unpaid business expenses, and (ii) an amount payable in accordance with the Company's regular payroll periods equal to the Executive's full monthly Base payable for three (3) months. Any amount due the Executive under (i) of this Section shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(e) Termination by the Executive for Good Reason. In the event this Agreement is terminated by the Executive pursuant to the provisions of Section 2.1(e) hereof, the Executive shall be entitled to receive (i) any accrued, but unpaid, Base and any vacation or sick leave benefits which have accrued as of the date of termination of the Agreement, but were then unpaid or unused and unpaid business expenses and (ii) an amount equal to Executive's full monthly Base payable hereunder for three (3) months payable in accordance with the Company's regular payroll periods. Any amount due the Executive under (i) of this Section shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of the Executive's employment hereunder.

(f) Termination by the Executive with Notice. In the event the Executive's employment hereunder is terminated by the Executive pursuant to the provisions of Section 2.1(f) hereof, all future compensation to which Executive is entitled and all future benefits for which Executive is eligible shall cease and terminate as of the date of termination. Executive shall be entitled to any accrued, but unpaid or unused, Base, vacation or sick leave benefits and unpaid business expenses through the date of termination. Any amount due the Executive hereunder shall be paid in a cash lump sum on the next regular and usual date for payment of wages, but no later than thirty (30) days after the termination of Executive's Employment hereunder.

(g) Termination of Obligations of the Company Upon Payment of Compensation. Upon payment of the amount, if any, due the Executive pursuant to the preceding provisions of this Article II, the Company shall have no further obligation to pay wages to the Executive under this Agreement.

### **ARTICLE III.**

#### **PROTECTION OF INFORMATION AND NON-COMPETITION AND NON-SOLICITATION**

3.1 Company's Agreements. Immediately upon execution of this Agreement and continuing thereafter during the course of Executive's employment by Company, Company agrees: (i) to provide Executive with access to its Trade Secrets and Confidential Information (as defined herein); (ii) to provide Executive with continuing training, development and education; and (iii) to provide Executive with Trade Secrets and Confidential Information about, and the opportunity to develop relationships with, Company's employees, customers and customer's employees and agents.

3.2 Protective Covenants. The Executive recognizes that Executive's employment by the Company is one of the highest trust and confidence because (i) the Executive will become fully familiar with all aspects of the Company's business during the term of this Agreement, (ii) certain information of which the Executive will gain knowledge during Executive's employment is proprietary and confidential information which is special and peculiar value to the Company, and (iii) if any such proprietary and confidential information were imparted to or became known by any person, including the Executive, engaging in a business in competition with that of the Company, hardship, loss or irreparable injury and damage could result to the Company, the measurement of which would be difficult if not impossible to ascertain. The Executive acknowledges that the Company has developed unique skills, concepts, designs, marketing programs, marketing strategy, business practices, methods of operation, trademarks, licenses, hiring and training methods, financial and other confidential and proprietary information concerning its operations and expansion plans, price lists, pricing policies, pricing contracts, rebate programs, sales and operating procedures, methods and techniques, management methods, operating techniques and capabilities, training manuals and procedures, marketing and development plans, financial and accounting data, information technology and computer systems ("Trade Secrets"). Confidential Information, as used in this Agreement, includes, but is not limited to, the Company's written, oral, electronic and visual information relating to (1) lists of, and all information about, each person or entity to which Company has sold Products or has provided services of any kind, or with which Company has entered into an agreement, or made a sale of any kind, including both current and prospective (all of which are hereinafter

collectively referred to as “Customers” or individually as “Customer”); (2) all the Customers’ contact information, which includes information about the identity and location of individuals with decision-making authority and the particular preferences, needs or requirements of the Customer, or such individual, with respect to quantities, transportation or delivery of Products, or particular needs or requirements of Customers based on geographical, economic or other factors; (3) all of Company’s pricing and formulas, methodologies, practices and systems, including those based upon particular Customers, particular quantities, or based on geographic, seasonal, economic or other factors, including all information about the price, terms, quantities or conditions of products or services sold or furnished by Company to its Customers; (4) financial information or any kind relating to sales and purchase histories, trend information about the growth or shrinking of a particular Customer’s needs, purchases or requirements; profit margins or markups or rebate programs, as well as all information about the costs and expenses which Company incurs to provide products or services to its Customers; (5) Company’s procedures, forms, methods, and systems for marketing to Customers and potential customers including all of its Customer development techniques and procedures, including training and other internal manuals, forms and documents; (6) technical information about Company or any of its Customers or suppliers, including information about computer programs, source codes, object codes, or software, data bases, data, equipment, systems or procedures; (7) financial information of any kind about Company or its operations; and (8) all information about Company’s employees, including their addresses and phone numbers, pay rates, benefits and compensation packages or history. Therefore, the Executive agrees that it is necessary for the Company to protect its business from such damage, and the Executive further agrees that the following covenants constitute a reasonable and appropriate means, consistent with the best interest of both the Executive and the Company, to protect the Company against such damage and shall apply to and be binding upon the Executive as provided herein:

(a) Trade Secrets/Confidential Information. The Executive recognizes that Executive’s position with the Company is one of the highest trust and confidence by reason of the Executive’s access to and contact with certain Trade Secrets and Confidential Information of the Company. The Executive agrees and covenants to use Executive’s best efforts and exercise utmost diligence to protect and safeguard the Trade Secrets of the Company. The Executive further agrees and covenants that, except as may be required by the Company in connection with this Agreement, or with the prior written consent of the Company, the Executive shall not, either during the term of this Agreement or thereafter, directly or indirectly, use for the Executive’s own benefit or for the benefit of another, or disclose, disseminate, or distribute to another, any Trade Secret (whether or not acquired, learned, obtained, or developed by the Executive alone or in conjunction with others) of the Company and Confidential Information. All correspondence, memoranda, notes, records, drawings, documents, files, mailing or contact lists, personnel lists or files, computer software or programs or files or other documents, programs or writings whatsoever made, compiled, acquired, or received by the Executive during the term of this Agreement related to Executive’s employment or performance hereunder, arising out of, in connection with, or related to any business of the Company, including, but not limited to, Trade Secrets and Confidential Information, are, and shall continue to be, the sole and exclusive property of the Company, and shall, together with all copies thereof and all advertising literature, be returned and delivered to the Company by the Executive immediately, without demand, upon the termination of this Agreement, or at any time upon the Company’s demand.

(b) Restriction on Soliciting Employees of the Company. The Executive covenants that during the term of this Agreement and for the non-solicitation period set forth on Exhibit “A” (“Non-Solicitation Period”) following the termination of this Agreement, Executive will not, either directly or indirectly, call on, solicit, employ, caused to be hired or take away, or attempt to call on, solicit, induce, employ, caused to be hired or take away any employee contractor, consultant, agent or representative, who has worked for the Company at any time within one (1) year of the date of Executive’s termination from the Company, either for Executive or for any other person, firm, corporation or other entity. Further, Executive shall not induce any employee of the Company to terminate Executive’s employment with the Company during the term of this Agreement or during the Non-Solicitation Period. Notwithstanding anything to the contrary contained herein, general solicitations of employment by means of newspaper, periodical or trade publication advertisements not directed at employees of the Company shall not constitute a violation of this provision.

(c) Covenant Not to Compete/Restriction on Soliciting Customers. The Executive hereby covenants and agrees that during the term of this Agreement and for the one year period after the termination of this Agreement, Executive will not without the prior written consent of the Company, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, shareholder (other than through ownership of publicly-traded capital stock of a corporation which represents less than five percent (5%) of the outstanding capital stock of such corporation), corporate officer, director, investor, financier or in any other individual or representative capacity, engage or participate or seek employment or accept employment with any business competitive with the business conducted by the Company within any county where the Company has physical operations and in any county contiguous to such county or is making an active effort to do business at the time of the execution of this Agreement. Additionally, Executive agrees and covenants, during the term of this Agreement and for the Non-Solicitation Period, not to, either directly or indirectly, call on, solicit, induce or take away, or attempt to call on, solicit, induce, take away, service or accept business from any customer of the Company (as of the date of termination of this Agreement) or induce, request or advise any such customer to terminate its relationship with the Company or request, induce or advise any customer of the Company to withdraw, curtail, modify or cancel their business with the Company. Further, during the term of this Agreement and the Non-Solicitation Period, Executive agrees and covenants not to use for Executive’s benefit or for the benefit of another or to disclose, disseminate, distribute, divert, attempt to divert, take advantage of or attempt to take advantage of any actual or potential business opportunity of the Company, which the Executive became aware of in the performance of this Agreement.

(d) Survival of Covenants. Each covenant of the Executive set forth in this Article III shall survive the termination of this Agreement and shall be construed as an agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action of the Executive against the Company whether predicated on this Agreement or otherwise shall not constitute a defense to the enforcement by the Company of said covenant.

(e) Remedies. In the event of breach or threatened breach by the Executive of any provision of this Article III, the

Company shall be entitled to relief by temporary restraining order, temporary injunction, or permanent injunction or otherwise, in addition to other legal and equitable relief to which it may be entitled, including any and all monetary damages which the Company may incur as a result of said breach, violation or threatened breach or violation. The Company may pursue any remedy available to it concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation, and the pursuit of one of such remedies at any time will not be deemed an election of remedies or waiver of the right to pursue any other of such remedies as to such breach, violation, or threatened breach or violation, or as to any other breach, violation, or threatened breach or violation.

(f) Limitations. The obligations of confidentiality regarding Trade Secrets shall not apply if (i) it was in the public domain prior to disclosure, (ii) such disclosure comes into the public domain through no fault of the Executive, or (iii) such disclosure is required by law or compelled by court order.

The Executive hereby acknowledges that the Executive's agreement to be bound by the protective covenants set forth in this Article III was a material inducement for the Company entering into this Agreement and agreeing to pay the Executive the compensation and benefits set forth herein. Further, Executive understands the foregoing restrictions may limit Executive's ability to engage in certain businesses during the period of time provided for, but acknowledges that Executive will receive sufficiently high remuneration and other benefits under this Agreement to justify such restriction.

## ARTICLE IV.

### GENERAL PROVISIONS

4.1 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered, on the date delivered via overnight delivery service or on the date deposited in a receptacle maintained by the United States Postal Service for such purpose, postage prepaid, by certified mail, return receipt requested, addressed to the respective parties as follows:

<u>If to the Executive:</u>	As set forth in <u>Exhibit "A"</u>
<u>If to the Company:</u>	DXP Enterprises, Inc. 7272 Pinemont Houston, Texas 77040 ATTN: David R. Little

Either party hereto may designate a different address by providing written notice of such new address to the other party hereto.

4.2 Severability. If any provision contained in this Agreement is determined by a court of competent jurisdiction or an arbitrator pursuant to Article V below to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision which was determined to be void, illegal, or unenforceable had not been contained herein. If the restrictions contained in Section 3.2(c) are found by a court to be unreasonable or overly broad as to geographic area or time, or otherwise unenforceable, the parties intend for said restrictions to be "blue penciled" by said court so as to be reasonable and enforceable and, as so modified, to be fully enforced.

4.3 Waiver Modification, and Integration. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This instrument contains the entire agreement of the parties concerning employment and supersedes all prior and contemporaneous representations, understandings and agreements (including but not limited to any initial employment or independent contractor agreement) either oral or in writing, between the parties hereto with respect to the employment of the Executive by the Company and all such prior or contemporaneous representations, understandings and agreements, both oral and written, are hereby terminated. This Agreement may not be modified, altered or amended except by written agreement of all the parties hereto.

4.4 Binding Effect. This Agreement shall be binding and effective upon the parties and their respective heirs, executors and successors. Neither party shall assign this Agreement without the prior written consent of the other party.

4.5 Governing Law. The parties intend that the laws of the State of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto without regard to principles of conflicts of law.

4.6 Representation of Executive. The Executive hereby represents and warrants to the Company that the Executive has not previously assumed any obligations inconsistent with those contained in this Agreement. The Executive further represents and warrants to the Company that the Executive has entered into this Agreement pursuant to Executive's own initiative and that this Agreement is not in contravention of any existing commitments. The Executive acknowledges that the Company has entered into this Agreement in reliance upon the foregoing representations of the Executive.

4.7 Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

4.8 Company. For the purposes of this Agreement, Company shall include any parent, subsidiary division of the Company, or any entity, which directly or indirectly, controls, is controlled by, or is under common control with the Company.

4.9 Executive. Executive represents to the Company and agrees that Executive: (i) was specifically advised to and fully understands Executive's rights to discuss all aspects of this Agreement with an attorney and Executive has been represented by counsel regarding this Agreement, and (ii) has carefully read and fully understands the provisions of this Agreement.

ARTICLE V.

**ARBITRATION**

5.1 Resolution of Disputes. In the event any dispute(s) arises between the parties with respect to the terms and provisions of this Agreement (a "Dispute"), the parties shall cooperate in good faith to resolve the Dispute(s). If the parties cannot resolve the Dispute(s) between themselves within ten (10) days after written notice of activation of the terms of this Article V, each party shall, within seven (7) days after the expiration of said 10 day period, select a mediator and shall notify the other party of such selection. The mediators shall have thirty (30) days from the expiration of said 7 day period to resolve the Dispute(s). If a resolution of the Dispute(s) does not occur through said mediation within said 30 days, the Dispute(s) shall be resolved by binding arbitration.

5.2 Arbitration. In the event any Dispute cannot be resolved through mediation the parties agree to submit such dispute(s) to binding non-appealable arbitration within ten (10) days from the expiration of the thirty (30) day period set out in Section 5.1. Any such arbitration arising hereunder shall be conducted in Houston, Texas in accordance with the rules of the American Arbitration Association then in effect including the rules governing employment disputes. Each party hereby submits itself to personal jurisdiction in Houston, Texas, for the purpose of such arbitration proceedings. Within fifteen (15) days from submitting the Dispute(s) to arbitration each party shall select its arbitrator. Then within twenty (20) days after said 15 days the two arbitrators shall select a third arbitrator. The three arbitrators shall have their first meeting within twenty (20) days after the selection of the third arbitrator. The arbitrators shall reach a final decision within one hundred eighty (180) days of their first meeting. The costs of arbitration shall be borne equally by the parties, except each party shall be responsible for such party's own arbitrator's and attorneys' fees.

ARTICLE VI.

**CONFIDENTIALITY**

6.1 Confidentiality. This Agreement is confidential, and the substance may be disclosed only as mutually agreed by the parties or as may be required by law.

DXP Enterprises, Inc.

By:

Executive:

\_\_\_\_\_

EXHIBIT "A" TO  
EMPLOYMENT AGREEMENT

Name:

Position:

Base: \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00).

Non-Solicitation Period: One (1) year.

Home Address:

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**EXHIBIT D**  
[INTENTIONALLY OMITTED]

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**EXHIBIT E**

**BILL OF SALE**

This **BILL OF SALE** (this "**Bill of Sale**") is made and delivered this 30<sup>th</sup> day of December, 2011, by C.W. Rod Tool Company, Inc., a Texas corporation ("**Seller**") for the benefit of DXP Enterprises, Inc., a Texas corporation ("**Purchaser**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as hereinafter defined).

**WHEREAS**, Seller, Controlling Shareholders and Purchaser have entered into that certain Asset Purchase Agreement dated as of December 30, 2011 (the "**Agreement**"), the terms of which are incorporated herein by reference, which provides, among other things, for the sale and assignment by Seller to Purchaser of the Purchased Assets.

**NOW, THEREFORE**, in consideration of the mutual promises contained in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, and subject to the terms and conditions of the Agreement:

1. Seller does hereby bargain, sell, grant, assign, transfer, convey and deliver unto Purchaser, and its successors and assigns, forever, all of Seller's right, title and interest in and to the Purchased Assets **TO HAVE AND TO HOLD** such Purchased Assets with all appurtenances thereto, unto Purchaser, and its successors and assigns, for its use forever.

2. This Bill of Sale shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

3. Nothing in this Bill of Sale, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Agreement. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the terms of the Agreement, the Agreement shall govern.

4. This Bill of Sale is executed and delivered pursuant to the Agreement.

5. This Bill of Sale shall be governed by, and construed in accordance with, the laws of the State of Texas, as applied to contracts made and performed entirely in such State.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, Seller has caused this Bill of Sale to be executed and delivered as of the day and year first above written.

C.W. Rod Tool Company, Inc.

By:

Charles W. Rod, President

E-

**EXHIBIT F**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 30, 2011 (this “**Agreement**”), between C.W. Rod Tool Company, Inc., a Texas corporation (“**Seller**”) and DXP Enterprises, Inc., a Texas corporation (“**Purchaser**”).

**WITNESSETH:**

WHEREAS, Seller and Purchaser are parties to an Asset Purchase Agreement, dated as of December 30, 2011 (the “**Agreement**”), providing for, among other things, the sale by Seller to Purchaser of the Purchased Asset and the assumption by Purchaser of the Assumed Liabilities; and

WHEREAS, in accordance with the terms of the Agreement, Seller and Purchaser have agreed to enter into this Agreement, providing for (a) the assignment from Seller to Purchaser of all of Seller’s right, title and interest in, under and to the Purchased Contracts from and after the Closing, on and subject to the terms of the Agreement, and (b) the acceptance by Purchaser of such assignment and the assumption by Purchaser of (i) all obligations to be performed by Seller under the Purchased Contracts on and after the Closing Date and (ii) the other Assumed Liabilities.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Assignment**. In accordance with and subject to the terms of the Agreement, Seller hereby sells, assigns, transfers and conveys to Purchaser, to the extent that such are legally assignable and any necessary consents to assignment have been obtained, all of Seller’s right, title and interest in, under and to the Purchased Contracts from and after the Closing.
2. **Acceptance and Assumption**. In accordance with and subject to the terms of the Agreement, Purchaser hereby (a) purchases and accepts the assignment, transfer and conveyance, to the extent that such are legally assignable and necessary consents to assignment have been obtained, of Seller’s right, title and interests in, under and to the Purchased Contracts; (b) assumes, undertakes and agrees, subject to valid claims and defenses, to pay, satisfy, perform or discharge in accordance with the terms thereof all obligations and liabilities of any kind arising out of, or required to be performed under, such assigned Purchased Contracts from and after the Closing; and (c) assumes, undertakes and agrees to timely pay when due, satisfy, perform or discharge in accordance with the terms thereof all of the Assumed Liabilities and all obligations and liabilities of any kind arising out of Purchaser’s assumption of the Assumed Liabilities.
3. **Parties in Interest**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
4. **Counterparts**. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, and all of which together shall constitute one and the same instrument.
5. **Governing Law**. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of Texas as applied to contracts made and performed entirely in such State.
6. **Definitions**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

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

Purchaser:

DXP Enterprises, Inc.

By:

Name:  
Title:

Seller:

C.W. Rod Tool Company, Inc.

By:

Charles W. Rod, President





**EXHIBIT G**

**SELLER'S DISCLOSURE SCHEDULES LETTER**

December 30, 2011  
DXP Enterprises, Inc.  
7272 Pinemont  
Houston, Texas 77040  
Attn: David R. Little, CEO

Re: Disclosure Schedule Letter

Gentlemen:

We refer to the Asset Purchase Agreement (the "APA") dated as of December 30, 2011 among DXP Enterprises, Inc. ("Purchaser") and C.W. Rod Tool Company, Inc. ("Seller") and the Controlling Shareholders pursuant to which Seller has agreed to sell to Purchaser and Purchaser has agreed to purchase from Seller the Purchased Assets on the terms and conditions set forth in the APA.

Terms defined in the APA are used with the same meaning in this Seller's Disclosure Schedule Letter. References herein to Schedules are to all the Schedules to this Seller's Disclosure Schedule Letter.

This Disclosure Schedule Letter and the Disclosure Schedules attached hereto constitute the Disclosure Schedules referred to in the APA. The representations and warranties of Seller in the APA are made and given subject to the disclosures in the attached Disclosure Schedules. Seller agrees to update the attached Disclosure Schedules due to any change in the disclosures set out herein or disclosures that should be set out herein.

Very truly yours,

C.W. Rod Tool Company, Inc.

By: \_\_\_\_\_  
Charles W. Rod, President

DXP acknowledges receipt of this Disclosure Schedule Letter including the Disclosure Schedules referred to herein.

Dated: December 30, 2011

DXP Enterprises, Inc.

By:  
Name:  
Title:

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## SCHEDULES

Schedule 2.1(a)	Accounts Receivable
Schedule 2.1(b)	Inventory
Schedule 2.1(c)	List of Vehicles
Schedule 2.1(j)	Permits
Schedule 2.1(l)	Non-Disclosure, Confidentiality, Non-Compete or Non-Solicitation Agreements
Schedule 2.2(c)	Excluded Assets
Schedule 2.3(b)	Assumed Liabilities
Schedule 2.4(i)	Excluded Liabilities
Schedule 2.7	Allocation Methodology
Schedule 3.1	Branch #7 Costs
Schedule 3.3(a-1)	Accounting Principles
Schedule 3.3(a-2)	Net Working Capital Principles
Schedule 3.4	Sub-Chapter S Tax Calculation
Schedule 5.1	Certificate of Incorporation and Bylaws, as amended, and a List of Shareholders and Shares Owned
Schedule 5.3(a)	Conflicts; Consents of Third Parties; Contracts or Permits
Schedule 5.7	Certain Developments
Schedule 5.8(c)	Taxes Paid and Tax Returns
Schedule 5.9(a)	Real Property Leases
Schedule 5.10(b)	Personal Property Leases
Schedule 5.11(a)	Intellectual Property
Schedule 5.11(b)	Non-Exclusive Intellectual Property
Schedule 5.11(e)	Licenses of Intellectual Property
Schedule 5.11(m)	Software Listing
Schedule 5.12(a)	Material Contracts
Schedule 5.12(b)	Material Contracts Exceptions
Schedule 5.13(a)	Multiemployer Plans
Schedule 5.13(c)	Section 401 Plans Issues
Schedule 5.15	Legal Proceedings
Schedule 5.16(b)	Seller Permits
Schedule 5.17	Environmental Matters
Schedule 5.18	Insurance Policies, Bonds and Events
Schedule 5.21	Related Party Transactions
Schedule 5.22	15 Largest Customers and 15 Largest Suppliers
Schedule 5.23	Product Warranty Exceptions
Schedule 5.24	Bank Names, Locations, Account Numbers and Lock Boxes
Schedule 5.26	Financial Advisors
Schedule 8.1(a)	List of Employees with Salary or Hourly Rate
Schedule 8.3(b)	List of Employees with Accrued Time
Schedule 9.1(h)	Employees Executing Noncompetition/Non-Solicitation Agreements

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## EXHIBIT H

### ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is made and entered into as of December 30, 2011, by and among DXP Enterprises, Inc., a Texas corporation ("Purchaser"), C.W. Rod Tool Company, Inc., a Texas corporation (the "Seller"), the Controlling Shareholders, as identified on the signature page to this Agreement and Wells Fargo Bank, National Association, a national banking association, as Escrow Agent (the "Escrow Agent").

### **BACKGROUND**

A. Purchaser, the Seller, and the Controlling Shareholders (as defined in the Purchase Agreement) are parties to an Asset Purchase Agreement, dated as of December 30, 2011 (the "Purchase Agreement"), pursuant to which Purchaser will acquire the Business and Purchased Assets of the Seller.

B. Purchaser, the Seller, and the Controlling Shareholders desire to establish an escrow account on the terms and conditions set forth herein. Initially Seller, pursuant to Section 10.5 of the Purchase Agreement, shall deposit the Escrow Amount with the Escrow Agent to be held in escrow. The Escrow Amount, Escrow Earnings (as hereinafter defined) therefore are referred to as the "Escrow Deposit". The "Escrow Amount" in immediately available funds is the sum of Two Million Eight Hundred Thousand and No/100 Dollars (\$2,800,000.00).

C. Purchaser, the Seller, and the Controlling Shareholders hereto desire to appoint the Escrow Agent to receive, hold and invest (as applicable) the Escrow Deposit, together with any interest or other income earned thereon ("Escrow Earnings"), and to disburse the Escrow Deposit and Escrow Earnings, in accordance with the terms set forth herein. The Escrow Agent has agreed to act as such upon the terms, covenants and conditions hereinafter set forth.

D. A material condition to the consummation of the transactions contemplated by the Purchase Agreement is that Purchaser, the Seller, and the Controlling Shareholders hereto enter into this Agreement.

### **AGREEMENT**

In consideration of the mutual representations, warranties and covenants contained herein, and upon and subject to the terms and the conditions hereinafter set forth, the parties do hereby agree as follows:

1. **Defined Terms**. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement. As between Purchaser and the Seller, the provisions of the Purchase Agreement are hereby incorporated herein by reference, but only as the context of this Agreement may require. The Escrow Agent is not a party to the Purchase Agreement and shall, therefore, act only in accordance with the terms and conditions contained in this Agreement, and it shall not have any liability under, nor duty to inquire into, the terms and provisions of the Purchase Agreement, other than with respect to the capitalized terms that are used herein as defined in the Purchase Agreement. "Business Day" shall mean any day of the year on which national banking institutions in Texas are open to the public for conducting business and are not required or authorized to close.

2. **Deposit of Escrow Amount**. At the Closing, Purchaser will deliver the Escrow Deposit to the Escrow Agent for deposit with the Escrow Agent, in accordance with Section 10.5 of the Purchase Agreement.

3. **Escrow**. Upon receipt of the Escrow Deposit, the Escrow Agent shall send a notice to the Seller and Purchaser acknowledging receipt of same and shall hold, administer and dispose of the Escrow Deposit pursuant to the terms of this Agreement (the "Escrow"). All rights associated with the Escrow Deposit shall be exercised by the Escrow Agent, and shall in no event be exercisable by or rest with the Seller or Purchaser, unless otherwise provided for herein. Unless otherwise directed in writing by Seller and Purchaser, the Escrow Agent shall invest the Escrow Deposit and the Escrow Earnings as set forth in Schedule I.

The Escrow Agent shall be entitled to sell or redeem any such cash investment as necessary to make any distributions required under this Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. Seller, Purchaser, and the Controlling Shareholders acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

4. **Distributions of the Escrow Deposit; Termination of the Escrow**. The Escrow Deposit shall be distributed by the Escrow Agent in accordance with the following:

(a) From time to time before the date that is the first Business Day immediately following the tenth (10<sup>th</sup>) Business Day after the first anniversary of the date of this Agreement (the "Release Date"), Purchaser may give notice (an "Indemnification Notice") to the Seller and the Escrow Agent specifying the nature and dollar amount (to the extent known) of a claim relating to any claim for indemnification (a "Claim") Purchaser may have under Article 10 of the Purchase Agreement and as to which the Escrow Deposit applies. If the Seller does not

deliver notice to Purchaser and the Escrow Agent disputing such Claim (a “ Counter Indemnification Notice ”) within twenty (20) days after the Seller’s receipt of the Indemnification Notice (a “ Dispute Deadline ”), then the dollar amount of the Claim set forth in Purchaser’s Indemnification Notice shall be deemed conclusive for purposes of this Agreement, and the Escrow Agent shall pay to (or as directed by) Purchaser the dollar amount of the Claim in the Indemnification Notice, as well as any and all Escrow Earnings with respect to such Claim amount earned from the date of initial deposit of the Escrow Amount (which, in any event, shall be a proportional amount of the Escrow Earnings to such date corresponding to the percentage of the Escrow Amount represented by such Claim amount), from the Escrow Deposit within five (5) Business Days following such applicable Dispute Deadline. The Escrow Agent shall not inquire into or consider whether a Claim complies with the requirements of the Purchase Agreement.

(b) If a Counter Indemnification Notice is given with respect to a Claim, the Escrow Agent shall make payment with respect to an Indemnification Notice only (i) in accordance with joint written instructions of Purchaser and the Seller or (ii) after a final decision has been rendered by a court or (only if agreed by Purchaser and the Seller in their respective sole discretion) binding arbitrator to enforce an award with respect to the amount of such Claim, and then in accordance with such decision. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court or binding resolution of arbitration, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction. Purchaser and the Seller hereby agree that any amounts paid to Purchaser hereunder in respect of any Claim (whether under subsection (a) or (b) of this Section 4 ) shall include the payment of the corresponding amount of the Escrow Earnings for such Claim amount earned from the date of initial Escrow Deposit.

(c) On the Release Date, the Escrow Agent shall release to the Seller a net amount equal to (i) the remaining balance of the Escrow Deposit and Escrow Earnings as of such date *minus* (ii) the amount of all Unresolved Claims *plus* all Escrow Earnings with respect to such Unresolved Claims amounts earned from the date of initial Escrow Deposit (which, in any event, shall be a proportional amount of the Escrow Earnings to such date corresponding to the percentage of the Escrow Deposit represented by the aggregate amount of such Unresolved Claims). For purposes of this Agreement, “ Unresolved Claims ” means, as of the Release Date, the aggregate amount of Claims that either (x) remain subject to a dispute pursuant to a Counter Indemnification Notice or (ii) for which an Indemnification Notice has been delivered prior to the Release Date but for which the full release of applicable amounts from the Escrow Deposit has not been made, as the case may be, as of the Release Date. Purchaser and the Seller hereby agree to execute and deliver to the Escrow Agent on the Release Date a joint written notice directing the disbursement of the corresponding amount (as calculated pursuant to the first sentence of this paragraph) of the Escrow Deposit and Escrow Earnings pursuant to this Section 4(c).

(d) For purposes of any Unresolved Claims, (i) with respect to any Unresolved Claim for which an Indemnification Notice has been delivered before the Release Date but for which a full release of applicable amounts from the Escrow Deposit and Escrow Earnings has not been made as of the Release Date, provided that such Unresolved Claim does not become the subject of a Counter Indemnification Notice, the Escrow Agent shall release to Purchaser the applicable portion of the Escrow Deposit subject to such Unresolved Claim, along with any and all Escrow Earnings with respect to such Unresolved Claim amount earned from the date of initial Escrow Deposit of the Escrow Amount (which, in any event, shall be a proportional amount of the Escrow Earnings to such date corresponding to the percentage of the Escrow Deposit represented by such Unresolved Claim amount), in accordance with the terms of subsections (a) or (b) (as applicable) of this Section 4 with respect to such Claim and (ii) with respect to any Unresolved Claim that is or becomes the subject of a Counter Indemnification Notice, the Escrow Agent shall release from the Escrow Deposit to Purchaser the applicable amount in accordance with subsection (b) of this Section 4. After the resolution of all Unresolved Claims, any amount of the Escrow Deposit and Escrow Earnings that was the subject of such Unresolved Claims but that is not released pursuant to the immediately preceding sentence shall be released by the Escrow Agent to the Seller. Purchaser and the Seller hereby agree to execute and deliver to the Escrow Agent on such date as no Unresolved Claims remain (after the Release Date) a joint written notice directing the disbursement of the corresponding amount (as calculated pursuant to the immediately preceding sentence) of the Escrow Deposit and Escrow Earnings pursuant to this Section 4(d).

(e) Purchaser and the Seller agree that Purchaser shall not submit an Indemnification Notice for purposes hereof unless Purchaser makes a reasonable determination that a Claim is or may be subject to indemnification under the terms of the Purchase Agreement, including by giving effect to the provisions of Article 10 of the Purchase Agreement and that the Seller shall be entitled to raise as a dispute in any Counter Indemnification Notice whether such Claim is subject to indemnification under the Purchase Agreement due to the limitations provided in Section 10.4.

(f) Except as set forth herein, no Escrow Earnings shall be remitted to Purchaser and/or the Seller for the period of time the Escrow Deposit is held by the Escrow Agent.

5. **Duties of the Escrow Agent**. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Under no circumstance will the Escrow Agent be deemed to be a fiduciary to any party or any other person under this Agreement. The Escrow Agent shall have no duty to enforce any obligation of any person, other than as provided herein. The Escrow Agent shall be under no liability to anyone by reason of any failure on the part of any party hereto or any maker, endorser or other signatory of any document or any other person to perform such person’s obligations under any such document. Except as set forth in this Agreement, the Escrow Agent shall not have any duties or responsibilities under any provision of any other agreement, including, without limitation, the Purchase Agreement.

6. **Liability of the Escrow Agent; Withdrawal**. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its reasonable judgment (other than acts of gross negligence or willful misconduct), and may rely conclusively and shall be protected in acting upon any court order (including without limitation any court order regarding disbursement of any amount of the Escrow Fund), reasonable advice of counsel (whether such counsel shall be regularly retained or specifically employed) chosen by the Escrow Agent, or document executed by Purchaser and the Seller authorizing action (or inaction) in accordance with these instructions by the Escrow Agent (not only as to its due execution and the validity and effectiveness of its

provisions, but also as to the truth and acceptability of any information therein contained) which is reasonably believed by the Escrow Agent to be genuine and to be signed or presented by the proper person(s). Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent authorized signers' forms in the form of Schedule II-1 and Schedule II-2 to this Escrow Agreement. The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer of the Escrow Agent unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted with willful misconduct. The Escrow Agent shall not be bound by any notice of demand, or any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. The Escrow Agent may execute customary ministerial and record keeping responsibilities hereunder through its authorized agents.

THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

Purchaser, Seller and Controlling Shareholders agree, jointly and severally, to indemnify the Escrow Agent for, and to hold it harmless from and against, any loss, liability, claims, actions, damages or expenses (including reasonable expenses and disbursements of its counsel) incurred without gross negligence or willful misconduct on the part of the Escrow Agent arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including the reasonable costs and expenses of defending itself against any such claim or liability. The foregoing indemnities in this paragraph shall survive the resignation or substitution of the Escrow Agent or the termination of this Agreement.

In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrow Deposit, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation. To the extent reasonably practicable, the parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same.

7. **The Escrow Agent's Fee**. Purchaser and the Seller shall each pay one-half (1/2) of the Escrow Agent's fees (as such fees are set forth on Schedule III hereto). The Escrow Agent shall be entitled to reimbursement from Purchaser and the Seller (one-half (1/2) each) for any reasonable expenses or disbursements incurred in connection with the performance of the Escrow Agent's obligations hereunder. Purchaser and the Seller shall each remit their respective shares of such fees and reimbursable amounts to Escrow Agent promptly upon receipt of an invoice from Escrow Agent. The Escrow Agent shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction, except that the Escrow Agent shall not be indemnified against any loss, liability or expense arising out of its gross negligence, or willful misconduct. Such indemnity shall survive the termination or discharge of this Agreement or resignation of the Escrow Agent. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Deposit with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Deposit.

8. **Escrow Agent In The Event Of Disagreement**. In the event of a disagreement between the Purchaser and Seller, resulting in adverse claims and demands being made in connection with, or for, the Escrow Deposit, Escrow Agent shall refuse to comply with the claims or demands as long as such disagreement shall continue. In so refusing, Escrow Agent shall make no delivery or other disposition of the Escrow Deposit, and in so doing Escrow Agent shall not be or become liable in any way to any person for its failure or refusal to comply with such conflicting or adverse demands. Escrow Agent shall be entitled to continue refraining from acting and/or refusing to act until Escrow Agent receives one or more of the following:

- (a) an authorization of a particular action executed by all parties to the disagreement; or
- (b) a certified or file-stamped copy of a court order resolving the disagreement or directing a specific distribution of all or any portion of the Escrow Deposit; or
- (c) ruling pursuant to arbitration in accordance with Indiana law resolving the disagreement or directing a specific distribution of all or any portion of Escrow Deposit.

Upon receipt of any such document, Escrow Agent shall promptly act according to its terms thereby being relieved from any duty, responsibility or liability arising from the adverse claims and demand or from the terms of this Agreement. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court or binding resolution of arbitration, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction. Further, in the event of the occurrence of any dispute between the parties hereto with respect to the Escrow Deposit, Escrow Agent may, without prejudice to any of its other rights hereunder, commence an action for interpleader in a court of competent jurisdiction, with respect to the Escrow Deposit. All of the costs and charges incurred by the Escrow Agent in connection with any such action, including reasonable attorney fees, shall be paid one-half (1/2) by Purchaser and one-half (1/2) by Seller.

9. **Inspection**. All funds or other property held as part of the Escrow Deposit shall at all times be clearly identified as being held by the Escrow Agent hereunder. Any party hereto may at any time during the Escrow Agent's business hours (with reasonable notice) inspect any records or reports relating to the Escrow Deposit.

10. **Accounting by Escrow Agent**. The Escrow Agent shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be made, including such specific records as shall be agreed upon in writing among Purchaser, the Seller and the Escrow Agent. Within fifteen (15) days following the close of each calendar quarter, the Escrow Agent shall deliver to Purchaser and the Seller a written account of its administration of the Escrow Deposit during such quarter, setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), and showing all cash, securities and other property held at the end of such month.

11. **Tax Reporting of Interest or Other Income Accrued with respect to the Escrow Fund**. Purchaser, the Seller and the Controlling Shareholders agree that (i) the Escrow Amount shall be treated as having been deposited by the Seller, (ii) all interest or other income attributable to the Escrow Fund shall be reported as taxable income or gain (as the case may be) of the Seller; (iii) if required by law, the Escrow Agent shall issue an IRS Form 1099 (or any successor form) relating to such taxable income or gain to and in the name of Purchaser; and (iv) the parties shall promptly deliver such certificates and other documents as required by applicable Treasury regulations and as the Escrow Agent may reasonably request in connection with the foregoing, including, without limitation, a completed, executed Internal Revenue Service Form W-8BEN or Form W-9, as applicable. The parties hereto understand that the failure to provide properly completed applicable withholding tax forms may cause the Escrow Agent to become obligated to withhold, pursuant to applicable provisions of the Code, a portion of any distributions from the Escrow Deposit or the Escrow Earnings (as such distributions are contemplated by Section 4 of this Agreement). To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Deposit, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Deposit. Purchaser and the Seller, jointly and severally, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Deposit and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 11 is in addition to the indemnification provided in Section 6 and shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement.

12. **Notices**. All notices, requests, consents and other communications required or permitted hereunder will be in writing and will be deemed given: (a) when delivered if delivered personally (including by courier); (b) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (c) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; or (d) upon receipt of a confirmed transmission, if sent by telecopy or facsimile transmission, in each case to the parties at the following addresses:

- (a) if to the Seller and the Controlling Shareholders:

C.W. Rod Tool Company, Inc.  
15050 Northgreen Boulevard  
Houston, Texas 77032  
Attn: Charles W. Rod  
Facsimile: (936) 539-6113

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

Peter Workin  
7500 San Felipe, Suite 750  
Houston, Texas 77063  
Facsimile: (800) 403-3780

- (b) if to Purchaser to:

DXP Enterprises, Inc.  
7272 Pinemont  
Houston, TX 77040  
Facsimile: (713) 996-4701  
Attention: David R. Little, CEO

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

Looper Reed & McGraw, P.C.  
1300 Post Oak Blvd., Suite 2000  
Houston, TX 77056  
Facsimile: (713) 986-7216  
Attention: Gary A. Messersmith

- (c) if to Escrow Agent to:

Wells Fargo Bank, National Association  
750 N. St. Paul Place, Suite 1750

or to such other person or address as a party may designate in writing.

13. **Governing Law and Venue**. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas without giving effect to the principles of conflicts of law thereof. The exclusive, proper, and preferred venue of any claim or cause of action among the Seller, Controlling Shareholders, and Purchaser concerning this Agreement shall lie in the United States District Court for the Southern District of Texas (Houston Division) Harris County, Texas. No such party seeking to enforce any right under or with respect to this Agreement shall bring an action in any other forum.

14. **Binding Effect; Benefit; No Assignment**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Except as expressly provided herein, this Agreement shall not be assignable by any party hereto without the prior written consent of the other parties; provided, however, that Purchaser from time to time may assign and grant a security interest in its rights, title and interest under this Agreement for collateral security purposes to any (i) lender(s) providing financing to Purchaser, (ii) any of Purchaser's subsidiaries or (iii) other Affiliates of Purchaser (no assignment of the interest of any of the Purchaser shall be binding unless and until written notice of such assignment shall be delivered to the other parties and the Escrow Agent), and any such lender(s) may exercise from time to time all of the rights and remedies of Purchaser hereunder; provided further that, in such case, Purchaser shall remain primarily liable under this Agreement.

15. **Modification**. Subject to Section 14 hereof, this Agreement may be amended or modified at any time by a writing executed by the Seller, Controlling Shareholders, Purchaser and the Escrow Agent.

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

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

18. **Entire Agreement; Severability and Further Assurances**. This Agreement and all exhibits and schedules attached hereto constitute the entire agreement among the parties with respect to the administration of the Escrow Deposit and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power or remedy. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. Each of the parties hereto shall, at the request of the other party, deliver to the requesting party all further documents or other assurances as may reasonably be necessary or desirable in connection with this Agreement.

19. **Resignation or Removal**. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

20. **Merger or Consolidation**. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

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





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

Purchaser:

DXP Enterprises, Inc.

By:

Name:

Title:

Seller:

C.W. Rod Tool Company, Inc.

By:

\_\_\_\_\_  
Charles W. Rod, President

Controlling Shareholders:

Charles W. Rod

Ronald D. Rod

Escrow Agent:

Wells Fargo Bank, National Association, solely in its capacity as Escrow Agent hereunder

By:

\_\_\_\_\_  
Amy C. Perkins, Vice President

SIGNATURE PAGE TO ESCROW AGREEMENT

862804.3

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**SCHEDULE II-1**

**Certificate as to Authorized Signatures**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Purchaser and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Schedule II-1 is attached, on behalf of Purchaser.

Name / Title	12.11	Specimen Signature
Name		Signature
Title		
Name		Signature
Title		
Name		Signature
Title		
Name		Signature
Title		

**SCHEDULE II-2**

**Certificate as to Authorized Signatures**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Seller and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Schedule II-2 is attached, on behalf of Seller.

Name / Title	12.12	Specimen Signature
_____ Name		_____ Signature
_____ Title		
_____ Name		_____ Signature
_____ Title		
_____ Name		_____ Signature
_____ Title		
_____ Name		_____ Signature
_____ Title		

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**SCHEDULE III**

**Escrow Agent's Fees**

Fee Schedule to act as Escrow Agent for

**DXP Enterprises, Inc. / C.W. Rod Tool Company, Inc.  
M&A Holdback Escrow**

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<b>Acceptance Fee:</b>	<b>Waived</b>
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Initial Fees as they relate to Wells Fargo Bank acting in the capacity of Escrow Agent – includes review of the Escrow Agreement; acceptance of the Escrow appointment; establishment of one (1) Escrow Account and accounting records; and coordination of receipt of funds for deposit to the Escrow Account; collection and review of Patriot Act information. This Acceptance Fee will be billed following the Escrow Agreement execution.

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<b>Escrow Agent Annual Administration Fee:</b>	<b>\$3,000.00</b>
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For ordinary administrative services by Escrow Agent – includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing); monitoring claim notices pursuant to the agreement; disbursement of funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. Tax reporting is included for up to two (2) entities or individuals. In the event additional reporting is necessary, a \$25 per reporting charge will be assessed. In the event the escrow agent is required to purchase outside investments, an additional fee will be assessed in the amount of \$75 per trade. The Annual Administration Fee is payable in advance, concurrent the Escrow Agreement execution. The Annual Administration Fee covers the anticipated term of 12-months, or any part thereof, and will not be prorated or refunded in the event of early termination.

**Wells Fargo's bid is based on the following assumptions:**

- Number of Escrow Accounts to be established: One (1)
- Number of Deposits to Escrow Account: One (1); approximately \$160,000 (USD)
- Number of Withdrawals from Escrow Fund: Estimated One (1); termination approximately 18-months
- **Appointment subject to requested due diligence information per the USAPATRIOT Act of 2001**
- **Proposal assumes balance will be invested in the Wells Fargo Money Market Demand Account; if alternative outside investments are chosen, the Escrow Agent reserves the right to adjust the Escrow Agent Annual Administration Fee**
- **All funds will be received from or distributed to a domestic or an approved foreign entity**
- **This proposal is valid for a period of 90 days from the date below**

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<b>Out-of-Pocket Expenses</b>	<b>At cost</b>
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We will charge for out-of-pocket expenses in response to specific tasks assigned by the Company or provided for in the escrow agreement. Possible expenses would be, but are not limited to, express mail and messenger charges. There are no charges for indirect out-of-pocket expenses.

*This fee schedule is based upon the assumptions listed above which pertain to the responsibilities and risks involved in Wells Fargo undertaking the role of Escrow Agent. These assumptions are based on information provided to us as of the date of this fee schedule. Our fee schedule is subject to review and acceptance of the final documents. Should any of the assumptions, duties or responsibilities change, we reserve the right to affirm, modify or rescind our fee schedule. Extraordinary services (services other than the ordinary administration services of Escrow Agent described above) are not included in the One-Time Administration Fee and will be billed as incurred at the rates in effect from time to time.*

Submitted by: **Greg L. Stites, Vice President**  
**Focus Opportunity Code: C730861**

**EXHIBIT I**

**MINUTES OF SHAREHOLDERS AND BOARD OF DIRECTORS**

**ACTION OF THE SHAREHOLDERS  
OF  
C. W. ROD TOOL COMPANY, INC.  
WITHOUT MEETING**

We, the undersigned, being all of the Shareholders of C. W. ROD TOOL COMPANY, INC. (the "Corporation"), do by this instrument in writing consent to the following actions and adopt the following resolutions:

**RESOLVED**, that the form, terms and provisions of the Asset Purchase Agreement (the "Agreement") by and between Corporation as Seller, and DXP Enterprises, Inc. as Purchaser, in connection with the sale of substantially all of the assets of C.W. Rod Tool Company, Inc. has been presented to and approved by the Shareholders;

**RESOLVED FURTHER**, that Charles W. Rod, III , in his capacity as President of the Corporation, be and he is hereby fully authorized, empowered and directed for and on behalf of the Corporation, to execute the Agreement and any and all additional documents necessary in order to consummate said sale of said assets, including, but not limited to bills of sale and assignments, escrow agreements, and leases, the execution and of such instruments or documents by such officer shall be conclusive evidence of his authority to do so, and to execute such other and further instruments as may be necessary or proper to negotiate and conclude said in accordance with the terms of the Agreement, and that Charles W. Rod, III , in his capacity as the Secretary of the Corporation be and he is fully authorized and directed to attest to any and all such instruments, if same be required;

**FURTHER RESOLVED**, that Charles W. Rod, III, in his capacity as President of the Corporation, be and is hereby authorized, in the name of and on behalf of the Corporation, and on behalf of the Corporation, to execute and deliver the Agreement, substantially in the form approved herein, together with such changes as Charles W. Rod, III, in his sole discretion, approves, the execution and delivery thereof by him to be conclusive evidence that the same have been approved by the Shareholders;

**FURTHER RESOLVED** , that the officers of the Corporation are authorized and directed to take those actions necessary to effect the hereinabove described activities of the Corporation.

The resolutions contained herein and the actions contemplated hereby are taken by unanimous written consent of the Shareholders pursuant to Article 6.201 of the Texas Business Organizations Code.

**EXECUTED** effective as of the 30th day of December, 2011.

**SHAREHOLDERS :**

\_\_\_\_\_  
Charles W. Rod, III

\_\_\_\_\_  
Ronald Rod

**ACTION OF  
BOARD OF DIRECTORS  
OF  
C. W. ROD TOOL COMPANY, INC.  
WITHOUT MEETING**

We, the undersigned, being all of the members of the Board of Directors of C. W. ROD TOOL COMPANY, INC. (the "Corporation"), do by this instrument in writing consent to the following actions and adopt the following resolutions:

**RESOLVED**, that the form, terms and provisions of the Asset Purchase Agreement (the "Agreement") by and between Corporation as Seller, and DXP Enterprises, Inc. as Purchaser, in connection with the sale of substantially all of the assets of C.W. Rod Tool Company, Inc. has been presented to and approved by the Directors;

**RESOLVED FURTHER**, that Charles W. Rod, III , in his capacity as President of the Corporation, be and he is hereby fully authorized, empowered and directed for and on behalf of the Corporation, to execute the Agreement and any and all additional documents necessary in order to consummate said sale of said assets, including, but not limited to bills of sale and assignments, escrow agreements, and leases, the execution and of such instruments or documents by such officer shall be conclusive evidence of his authority to do so, and to execute such other and further instruments as may be necessary or proper to negotiate and conclude said in accordance with the terms of the Agreement, and that Charles W. Rod, III , in his capacity as the Secretary of the Corporation be and he is fully authorized and directed to attest to any and all such instruments, if same be required;

**FURTHER RESOLVED**, that Charles W. Rod, III, in his capacity as President of the Corporation, be and is hereby authorized, in the name of and on behalf of the Corporation, and on behalf of the Corporation, to execute and deliver the Agreement, substantially in the form approved herein, together with such changes as Charles W. Rod, III, in his sole discretion, approves, the execution and delivery thereof by him to be conclusive evidence that the same have been approved by the Directors;

**FURTHER RESOLVED**, that the officers of the Corporation are authorized and directed to take those actions necessary to effect the hereinabove described activities of the Corporation.

The resolutions contained herein and the actions contemplated hereby are taken by unanimous written consent of the Board of Directors pursuant to Section 6.201 of the Texas Business Organizations Code.

**EXECUTED** effective as of the 30th day of December, 2011.

**DIRECTORS :**

\_\_\_\_\_  
Charles W. Rod, III

\_\_\_\_\_  
Ronald Rod

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## EXHIBIT J

### LEASE TERMINATION AGREEMENT

This Termination of Lease Agreements (this "Agreement") is made as of this 30th day of December, 2011 between **RCR VENTURES, LTD.** ("Landlord") and **C.W. ROD TOOL COMPANY, INC.** ("Tenant").

Reference is made to the following facts:

- A. Landlord and Tenant are parties to those certain seven (7) Lease Agreements listed in Exhibit A, which for each Lease Agreement provides the date of each lease, the physical address of each leased premises (collectively, the "Premises") and the last day of the existing term of each Lease Agreement.
- B. Tenant plans to vacate each Premises on or before December 30, 2011 and as a result, the parties have agreed to terminate each Lease Agreement as of 11:59 p.m. on December 29, 2011 (the "Effective Termination Date") upon the terms and conditions set forth below.

Now, therefore, in consideration of the mutual covenants and consideration set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Effective Termination Date. Subject to the terms and conditions set forth herein, Tenant and Landlord agree that each Lease Agreement is hereby terminated, effective as of the Effective Termination Date as if the Effective Termination Date were the date set forth in each Lease Agreement for the expiration of the term of each Lease Agreement.

2. Surrender of the Premises. Tenant will surrender each of the Premises to Landlord on or before the Effective Termination Date, together with all keys (and any copies thereof) and access cards to each of the Premises.

3. Landlord Release. Landlord hereby releases, acquits and forever discharges Tenant, its affiliates, officers, directors, stockholders, employees, representatives, successors and assigns (collectively, the "Released Tenant Parties") of and from any and all actions or causes of action, suits, debts, dues, sums of money, acts, bonds, bills, covenants, controversies, promises, variances, permits, trespasses, accounts, contracts, agreements, damages, judgments, executions, claims, liabilities, and demands whatsoever of every name and nature, at law or in equity, which Landlord or its affiliates, successors and assigns, on the one hand, can, shall, may have, or may claim to have against any of the Released Tenant Parties, on the other hand, for, upon or by reason of any matter directly or indirectly arising out of or connected in any way with each Lease Agreement or any interaction between Landlord and any of the Released Tenant Parties relating in any way to each Lease Agreement.

4. Tenant Release. Tenant hereby releases, acquits and forever discharges Landlord, its affiliates, managers, members, employees, representatives, successors and assigns (collectively, the "Released Landlord Parties") of and from any and all actions or causes of action, suits, debts, dues, sums of money, acts, bonds, bills, covenants, controversies, promises, variances, permits, trespasses, accounts, contracts, agreements, damages, judgments, executions, claims, liabilities, and demands whatsoever of every name and nature, at law or in equity, which Tenant or its subsidiaries, affiliates, successors and assigns, on the one hand, can, shall, may have, or may claim to have against any of the Released Landlord Parties, on the other hand for, upon or by reason of any matter directly or indirectly arising out of or connected in any way with the Lease or any interaction between Tenant and any of the Released Landlord Parties relating in any way to each Lease Agreement.

5. Representations and Warranties. Landlord and Tenant each represent, as to itself, (a) that it is validly existing and in good standing in the state where it was organized; (b) that it has the authority and capacity to enter into this Agreement and perform all of its obligations hereunder; (c) that all necessary action has been taken in order to authorize it to enter into and perform all of its obligations hereunder; (d) that the person executing this Agreement on its behalf is duly authorized to do so; and (e) that it has had the advice of counsel in entering into this Agreement.

6. Successors and Assigns. Each of the covenants, conditions, terms agreements and obligations of the parties shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors and assigns of each party.

7. Miscellaneous. This Agreement shall become effective in all respects only upon its due execution and delivery by both Landlord and Tenant. This Agreement contains the entire agreement of the parties regarding the subject matter hereof. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, among them, relating to this subject matter, other than as set forth herein. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the party against whom such modification is sought to be enforced. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Delivery of a signed counterpart of this Agreement by facsimile transmission shall constitute good and valid execution and delivery of this Agreement.

8. Severability. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

9. Governing Law; Interpretation. All questions with respect to the construction of this Agreement and the rights and

liabilities of the parties shall be determined in accordance with the laws of the state of in which each of the Premises is located, without regard to choice of law principles. No provision of this Agreement shall be interpreted in favor of or against any party hereto by virtue of the fact that such party, or such party's legal representative, drafted the provision in question.

Executed as a sealed instrument as of the date first written above.

Landlord: **RCR VENTURES, LTD.**

By:  
Name:  
Title:

Tenant: **C.W. ROD TOOL COMPANY, INC.**

By: \_\_\_\_\_  
Name: Charles W. Rod, III  
Title: President

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EXHIBIT A

REAL PROPERTY LEASES

- 1) Lease between RCR Ventures, Ltd. and Seller for property located at 15050 Northgreen Boulevard, Houston, Texas 77032 dated April 1, 2008 and renewed for 1 year on April 1, 2011.
- 2) Lease between RCR Ventures, Ltd. and Seller for property located at 6311 Hwy 90W, New Iberia, Louisiana 70560 dated November 1, 2009 and renewed for 1 year on November 1, 2011.
- 3) Lease between RCR Ventures, Ltd. and Seller for property located at 6714 Brittmoore Road, Houston, Texas 77041 dated April 1, 2008 and renewed for 1 year on April 1, 2011.
- 4) Lease between RCR Ventures, Ltd. and Seller for property located at 1501 Alabama Street, South Houston, Texas 77587 dated April 1, 2008 and renewed for 1 year on April 1, 2011.
- 5) Lease between RCR Ventures, Ltd. and Seller for property located at 1218 Barrow Street, Houma, Louisiana 70360 dated April 1, 2008 and renewed for 1 year on April 1, 2011.
- 6) Lease between RCR Ventures, Ltd. and Seller for property located at 3105 Pollok Dr., Conroe, Texas 77303 dated November 1, 2009 and renewed for 1 year on November 1, 2011.
- 7) Lease between RCR Ventures, Ltd. and Seller for property located at 616 106<sup>th</sup> Street, Arlington, Texas 76011 dated November 1, 2011.

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SUBSIDIARIES OF THE COMPANY

SEPCO Industries, Inc., a Texas Corporation

DXP Acquisition, Inc., a Nevada corporation (doing business as Strategic Supply, Inc.)

PMI Operating Company, Ltd., a Texas limited partnership

PMI Investment, LLC, a Delaware limited liability corporation

Pump – PMI LLC, a Texas limited liability corporation

R. A. Mueller, Inc. an Ohio corporation

Precision Industries, Inc., a Nebraska corporation

Vertex Corporate Holdings, Inc., a Delaware corporation

Pawtucket Holdings, Inc., a Delaware corporation

PFI, LLC, a Rhode Island limited liability company

DXP Energy Services, LLC, a Texas limited liability corporation

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation of our report dated March 9, 2012 relating to our audit of the consolidated financial statements, the financial statement schedule and internal control over financial reporting included in this Annual Report on Form 10-K, into the Company's previously filed registration statements on Form S-8 (File Nos. 333-134606, 333-123698, 333-61953, 333-92875 and 333-92877) and Form S-3 (File No. 333-134603).

Hein & Associates LLP  
Houston, Texas

March 9, 2012

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CERTIFICATIONS

I, David R. Little, certify that:

1. I have reviewed this annual report on Form 10-K of DXP Enterprises, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2012

/s/ David R. Little  
David R. Little  
President and Chief Executive Officer  
(Principal Executive Officer)

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CERTIFICATIONS

I, Mac McConnell, certify that:

1. I have reviewed this annual report on Form 10-K of DXP Enterprises, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2012

/s/ Mac McConnell

Mac McConnell

Senior Vice President and Chief Financial Officer

(Principal Financial Officer)

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CERTIFICATION

Pursuant to 18 U.S.C. Section 1350,  
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended.

Pursuant to 18 U.S.C. Section 1350, as added by Section 906 of the Sarbanes-Oxley Act of 2002, as amended, the undersigned officer of DXP Enterprises, Inc. (the "Company") hereby certifies that the Company's Annual Report on Form 10-K for the year ended December 31, 2011 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m or 78o(d)), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 9, 2012

/s/David R. Little  
David R. Little  
President and Chief Executive Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

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CERTIFICATION

Pursuant to 18 U.S.C. Section 1350,  
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended

Pursuant to 18 U.S.C. Section 1350, as added by Section 906 of the Sarbanes-Oxley Act of 2002, as amended, the undersigned officer of DXP Enterprises, Inc. (the "Company") hereby certifies that the Company's Annual Report on Form 10-K for the year ended December 31, 2011 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m or 78o(d)), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 9, 2012

/s/Mac McConnell  
Mac McConnell  
Senior Vice President and Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

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