



## Asset Purchase Agreement

**Document 1351A**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (“**Agreement**”) is made effective and entered into as of [DATE], by [NAME OF COMPANY], a \_\_\_\_\_ corporation (“**Seller**”), and [NAME OF BUYER], a \_\_\_\_\_ corporation (“**Buyer**”). Seller and Buyer are individually and collectively sometimes referred to in this Agreement as a “**Party**” and the “**Parties**”, respectively.

### RECITALS

WHEREAS, the Seller desires to sell, certain Assets defined in Section 2.1 (Assets) of this Agreement;

WHEREAS, The Buyer desires to purchase the Assets set forth in this Agreement, for the consideration and on the terms set forth in this Agreement;

NOW THEREFORE, in consideration of the above recital and the following mutual promises and covenants, the Parties, intending to be legally bound thereby, agree as follows:

**1. Definitions.** As used in this Agreement, the following terms shall have the following meanings:

1.1 “**Best Efforts**” means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible; provided, however, that an obligation to use Best Efforts under this Agreement does not require the Person subject to that obligation to take actions that would result in a materially adverse change in the benefits to such Person of this Agreement and the Contemplated Transaction.

1.2 “**Breach**” means a breach of a representations, warranty, covenants, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been (a) any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision, or (b) any claim (by and Person) or other occurrence or circumstance that is or was inconsistent with such representation, warranty, covenant, obligation, or other provision, and the term “Breach” means any such inaccuracy, breach, failure, claim, occurrence, or circumstance.

1.3 “**Closing Date**” means the date and time as of which the Closing actually takes place.

1.4 “**Consent**” means any approval, consent, ratification, waiver, or other authorization.

1.5 “**Contemplated Transactions**” means all of the transactions contemplated by this Agreement, including:

- (a) the sale of the Assets by Seller to Buyer;

- (b) the execution, delivery, and performance of the Non-competition Agreements;
- (c) the performance by Buyer and Seller of their respective covenants and obligations under this Agreement; and
- (d) Buyer's acquisition and ownership of the Assets.

1.6 **"Disclosure Letter"** means the disclosure letter delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

1.7 **"Encumbrance"** means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer receipt of income, or exercise of any other attribute of ownership.

1.8 **"Knowledge"**, an individual will be deemed to have "Knowledge" of a particular fact or other matter if:

- (a) such individual is actually aware of such act or other matter; or
- (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

A Person (other than an individual) will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor, or trustee of such Person (or in any similar capacity) has, or at any time had, Knowledge of such fact or other matter.

1.9 **"Person"** means an individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

1.10 **"Proceeding"** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

1.11 **"Purchase Price"** means the sum of the purchase prices of the individual assets comprising the Assets as determined pursuant to Section 2.1 of this Agreement.

1.12 **"Representative"** means any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

1.13 **"Threatened"** means a claim, Proceeding, dispute, action, or other matter will be deemed to have been "Threatened" if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing), or if any other event has occurred or

any other circumstances exist, that would lead a prudent Person to conclude that such a claim, Proceeding, dispute, action, or other matter, is likely to be asserted, commences, taken, or otherwise pursued in the future.

## **2. Sale and Transfer of Assets; Closing.**

2.1. Assets; Purchase Price. Subject to the terms and conditions of this Agreement, at the Closing and effective as of [DATE], Seller will sell, assign, and transfer the following assets to Buyer, and Buyer will purchase such assets from Seller (collectively the “Assets”):

(i) *Inventory.* All the inventory of tires and parts listed in [REFERENCE] for the purchase price of \$\_\_\_\_\_ plus the Adjustment Amount;

(ii) *Leasehold Improvements.* Each of the leasehold improvements listed in [REFERENCE] for the purchase price of \$\_\_\_\_\_ plus the Adjustment Amount;

(iii) *Furniture and Fixtures.* All the furniture and fixtures listed in [REFERENCE] for the purchase price of \$\_\_\_\_\_;

(iv) *Vehicles.* All the vehicles listed in [REFERENCE] for the purchase price of \$\_\_\_\_\_ plus the Adjustment Amount;

(v) *Machinery and Equipment.* All the machinery and equipment listed in [REFERENCE] for the purchase price of \$\_\_\_\_\_ plus the Adjustment Amount;

(vi) *Fictional Business Names.* Seller’s fictitious business names listed in [REFERENCE] to which the Parties assign no purchase price.

2.2 Adjustment Amount. The Adjustment Amount (which may be a positive or negative number) will be equal to the sum of the difference in the value of the following classes of assets listed in [REFERENCE] and those same classes of assets determined by the Parties to exist as of the close of business on [DATE]:

(i) the Inventory [general list] valued at Seller’s cost.

(ii) the Accounts Receivable valued at \_\_\_% of face value.

2.3 Verification of Inventory. Seller and Buyer shall jointly verify the existence of the items of Inventory, [Leasehold Improvements, Vehicles, Machinery and Equipment], and Accounts Receivable which are included in the Assets as of the close of business on [DATE]. If the Purchase Price is greater than the payments made pursuant to Section 2.2 (Earnest Money), Buyer will pay the difference to Seller, and if the Purchase Price is less than such amount, Seller will pay the difference to Buyer. All payments will be made together with interest at \_\_\_\_\_% compounded daily beginning on the Closing Date and ending on the date of payment. Payments shall be made by wire transfer to a bank account specified by the payee.

2.4 Earnest Money. Contemporaneously with the delivery by Seller to Buyer of the [Disclosure Letter], Buyer:

(a) shall pay to Seller \$\_\_\_\_\_ in immediately available funds which shall constitute a non-refundable earnest money deposit; and

(b) shall deliver to Seller a binding commitment from a financial institution acceptable to Buyer to fund the full amount of the Purchase Price (less the earnest money deposit) on the terms and conditions of this Agreement.

2.5. Closing. The purchase and sale (the “**Closing**”) provided for in this Agreement will take place at the offices of [\_\_\_\_\_ counsel at [location], at [time]. (local time) on [date]] or at such other time and place as the Parties may agree. Subject to the provisions of Section 9 (Termination), failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.3 (Closing) will not result in the termination of this Agreement and will not relieve either Party of any obligation under this Agreement.

2.6 Seller’s Closing Obligations. At the Closing Seller will deliver to Buyer:

(a) conveyance documents in a form reasonably acceptable to Buyer selling, assigning, and transferring to Buyer all of Seller’s right, title and interest in and to the Assets;

(b) non-competition agreement in the form of Exhibit A, executed by Seller (the “**Non-competition Agreement**”); and

(c) a certificate executed by Seller representing and warranting to Buyer that each of Seller’s representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to any supplements to the [Disclosure Letter] that were delivered by Seller to Buyer prior to the Closing Date in accordance with Section 5.3 (Seller’s Notification); and

2.7 Buyer’s Closing Obligations. At the Closing, Buyer will deliver to Seller:

(a) the full amount of the Purchase Price (less the earnest money deposit) by wire transfer to a bank account specified by Seller; and

(b) a certificate executed by Buyer to the effect that, except as otherwise stated in such certificate, each of Buyer’s representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date; and

**3. Representations and Warranties of Seller.** Seller represents and warrants to Buyer as follows:

3.1 Enforceability. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally as well as general principles of equity. Upon the execution and delivery by Seller of the documents required to be delivered pursuant to Section

2.4(a) (Seller's Closing Obligations) (collectively, the "**Seller's Closing Documents**"), the Seller's Closing Documents will constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally as well as general principles of equity.

3.2 Seller's Authority. Seller has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and the Seller's Closing Documents and to perform its obligations under this Agreement and the Seller's Closing Documents.

3.3 No Consent. Except as set forth in [REFERENCE EXCEPTION IF ANY], Seller is not, nor will be, required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

3.4 Complete List of Assets. [REFERENCE] contains a complete and accurate list of all Assets being sold by Seller to Buyer under this Agreement. Seller has delivered or made available to Buyer copies of the deed and other instruments (as recorded) by which Seller acquired such real property and interests, and copies of all title insurance policies, opinions, abstracts, and surveys in the possession of Seller relating to such property or interests. All Assets are free and clear of all Encumbrances except (i) liens for current taxes not yet due, and (ii) with respect to real property, (A) minor imperfections of title, if any, none of which is substantial in amount, materially detracts from the value or impairs the use of the property subject thereto, and (B) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

3.5 No Proceedings. No pending Proceeding that has been commenced against Buyer challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions, nor to Buyer's Knowledge, has any such Proceeding been Threatened.

3.6 Fictitious Names. Except as set forth in [REFERENCE], Seller uses no fictitious business names or trading names.

3.7 No False Statement. No representation or warranty of Seller in this Agreement and no statement in the [Disclosure Letter] omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

3.8 No Notice. No notice given pursuant to Section 5.3 (Seller's Notification) will contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Agreement, in light of the circumstances in which they were made, not misleading.

3.9 No Broker. Seller and its agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

**4. Representations and Warranties of Buyer.** Buyer represents and warrants to the Seller as follows:

4.1 Corporate Existence. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the [STATE].

4.2 Enforceability. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally as well as general principles of equity. Upon the execution and delivery by Buyer of Non-competition Agreement to be delivered pursuant to Section 2.4(b) (collectively, the “**Buyer’s Closing Documents**”), the Buyer’s Closing Documents will constitute the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally as well as general principles of equity.

4.3 Buyer’s Authority. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Buyer’s Closing Documents and to perform its obligations under this Agreement and the Buyer’s Closing Documents.

4.4 No Proceedings. No pending Proceeding has been commenced against Buyer challenges, or may have the effect of preventing, making illegal, or otherwise interfering with, any of the Contemplated Transactions, nor to Buyer’s knowledge, has any such proceeding been threatened.

4.5 No Broker. Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders’ fees or agents’ commissions or other similar payment in connection with this Agreement.

**5. Covenants of Seller Prior to Closing Date.**

5.1 Access and Investigation. Between the date of this Agreement and the Closing Date, Seller will (i) afford Buyer and its Representatives and prospective lenders and their Representatives (collectively, “**Buyer’s Advisors**”) full and free access to Seller’s properties (including subsurface testing), books and records, and other documents and data, (ii) furnish Buyer and Buyer’s Advisors with copies of all such books and records, and other existing documents and data as Buyer may reasonably request, and (iii) furnish Buyer and Buyer’s Advisors with such additional data and information as Buyer may reasonably request.

5.2 Required Approvals. Between the date of this Agreement and the Closing Date, Seller will cooperate with Buyer in obtaining all consents identified in [REFERENCE].

5.3 Seller’s Notification. Between the date of this Agreement and the Closing Date, Seller will promptly notify Buyer in writing if Seller becomes aware of any fact or condition that causes or constitutes a Breach of any of Seller’s representations and warranties as of the date of this Agreement, or if Seller becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or

constitute a Breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. Should any such fact or condition require any change in the [Disclosure Letter] if the [Disclosure Letter] were dated the date of the occurrence or discovery of any such fact or condition, Seller will promptly deliver to Buyer a supplement to the [Disclosure Letter] specifying such change. During the same period, Seller will promptly notify Buyer of the occurrence of any Breach of any covenant of Seller in this Section 5 (Covenants of Seller Prior to Closing Date) or of the occurrence of any event that may make the satisfaction of the conditions in Section 8 (Conditions Precedent to Seller's Obligation to Close) impossible or unlikely.

5.4 Best Efforts. Between the date of this Agreement and the Closing Date, Seller will use its Best Efforts to cause the conditions in Sections 7 (Conditions Precedent to Buyer's Obligation to Close) and 8 (Conditions Precedent to Seller's Obligation to Close) to be satisfied.

**6. Covenant of Buyer Prior to Closing Date.** Between the date of this Agreement and the Closing Date, Buyer will use its Best Efforts to cause the conditions of Sections 7 (Conditions Precedent to Buyer's Obligation to Close) and 8 (Conditions Precedent to Seller's Obligation to Close) to be satisfied.

**7. Conditions Precedent to Buyer's Obligation to Close.** Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 Accuracy of Representations. All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement, and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

7.2 Seller's Performance.

7.2.1 All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

7.2.2 Each document required to be delivered pursuant to Section 2.4(a) (Seller's Closing Obligations) must have been delivered, and each of the other covenants and obligations in Sections 5.2 (Required Approvals) and 5.4 (Best Efforts) must have been performed and complied with in all respects.

7.3 Additional Documents. Each of the following documents must have been delivered to Buyer: (i) account information of all customers who have purchased [type of products] from [Seller], in the last three years; and (ii) accounting, management information system, and other data related to the Assets reasonably requested by Buyer.

7.4 No Proceedings. Since the date of this Agreement, there must not have been commenced or Threatened against Buyer that may have the effect of preventing, making illegal, or otherwise interfering with any of the Contemplated Transactions.

**8. Conditions Precedent to Seller's Obligation to Close.** Seller's obligation to sell the Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part):

8.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

8.2 Buyer's Performance.

8.2.1 All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

8.2.2 Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to Section 2.5(b) (Buyer's Closing Obligations) and must have made the cash payments required to be made by Buyer pursuant to Sections 2.1 (Assets; Purchase Price) and 2.2 (Adjustment Amount).

8.3 Consents. Each of the Consents identified in [REFERENCE] must have been obtained and must be in full force and effect.

8.4 No Injunction. There must not be in effect any injunction that (a) prohibits the sale of the Assets by Seller to Buyer, and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

**9. Termination.**

9.1 Termination Events. This Agreement may be terminated by notice given prior to or at the Closing (with Seller retaining the earnest money deposit provided in Section 2.2 (Buyer's Closing Obligations)): (i) by either Buyer or Seller if a material Breach of any provisions of this Agreement has been committed by the other Party and such Breach has not been waived; (ii) (A) by Buyer if any of the conditions in Section 7 (Conditions Precedent to Buyer's Obligation to Close) has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or (B) by Seller, if any of the conditions in Section 8 (Conditions Precedent to Seller's Obligation to Close) has not been satisfied of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with their obligations under this Agreement) and Seller have not waived such condition on or before the

Closing Date; (iii) by mutual consent of Buyer and Seller; or (iv) by either Buyer or Seller if the Closing has not occurred (other than through the failure of the Party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before [DATE] or such later date as the Parties may agree upon.

9.2 Effect of Termination. Each Party's right of termination under Section 9.1 (Termination Events) is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1 (Termination Events), all further obligations of the Parties under this Agreement will terminate, except that the obligations in Section 11.1 (Expenses) will survive; provided, however, that if this Agreement is terminated by a Party because of the Breach of the Agreement by the other Party or because one or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

## **10. Remedies.**

10.1 Survival. All representations, warranties, covenants, and obligations in this Agreement, the [Disclosure Letter], any supplements to the [Disclosure Letter], the certificates delivered pursuant to Section 2.4(c) (Seller's Closing Obligations) and 2.5(b) (Buyer's Closing Obligations) and any other certificate or document delivered pursuant to this Agreement will survive the Closing for six (6) months and then expire.

10.2 Time Limitations. If the Closing occurs, Seller will have no liability with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, unless within three months after the Closing Buyer notifies Seller of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Buyer. If the Closing occurs, Buyer will have no liability with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, unless within three months after the Closing Seller notifies Buyer of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Seller.

## **11. General Provisions.**

11.1 Expenses. Except as otherwise expressly provided in this Agreement, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel and accountants. In the event of termination of this Agreement, the obligation of each Party to pay its own expenses will be subject to any rights of such Party arising from a breach of this Agreement by the other Party.

11.2 Confidentiality. Between the date of this Agreement and the Closing Date, Buyer and Seller will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of Buyer to maintain in confidence, and not use to the detriment of the other Party and written, oral, or other information obtained in confidence from the other Party in connection with this Agreement or the Contemplated Transactions, unless (a) such information is already

known to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such Party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (c) the furnishing or use of such information is required by legal proceedings. If the Contemplated Transactions are not consummated, each Party will return or destroy as much of said written information as the other Party may reasonably request.

11.3 Notices. Any notice, payment, demand, or communication required or permitted to be given by any provisions of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally, including by overnight courier, to the Party or to any officer of the Party to whom the same is directed or (ii) whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, addressed to such Party at the address set forth below, or to such other address as such Party may from time to time specify by notice pursuant to this Section 11.3 (Notices).

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11.4 Further Assurances. The Parties agree (i) to furnish upon request to each other such further information, (ii) to execute and deliver to each other such other documents, and (iii) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

11.5 Waiver. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any rights, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, powers, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation

of the claim or right unless in writing signed by the other Party; b) no waiver that may be given by a Party will be applicable except in the specific instance of which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

11.6 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the Party to be charged with the amendment.

11.7 Disclosure Letter. This disclosures in the [Disclosure Letter], and this in any Supplement thereto, must relate only to the representations and warranties in the Section of the Agreement to which they expressly related and not to any other representation or warranty in this Agreement. In the event of any inconsistency between the statements in the body of this Agreement and those in the [Disclosure Letter] (other than an exception expressly set for as such in the [Disclosure Letter] with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

11.8 Assignments, Successors, and No Third-Party Rights. Neither Party may assign any of its rights under this Agreement without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and assigns.

11.9 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

11.10 Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretations. All references to “Section” or “Sections” refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms.

11.12 Time of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

11.13 Governing Law. This Agreement will be governed by the laws of the [STATE] without regard to conflicts of laws principles.

11.14 Counterparts. This Agreement may only 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.

*[The remainder of the page has been intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the Parties, each warranting and representing that it has lawful authority to execute this Agreement and to perform all acts required of it under this Agreement, have executed and delivered this Agreement as of the date first above written.

**SELLER:**

[COMPANY NAME]

By: \_\_\_\_\_

Its:

**BUYER:**

[COMPANY NAME]

By: \_\_\_\_\_

Its:

**NON-COMPETITION AGREEMENT**