

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

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **May 16, 2016**

**PERSEON CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**001-32526**

(Commission File Number)

**75-1590407**

(IRS Employer Identification No.)

**391 Chipeta Way**

**Salt Lake City, Utah 84108**

(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code: **(801) 972-5555**

**N/A**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 Entry Into a Material Definitive Agreement.**

### **Asset Purchase Agreement**

On May 17, 2016, Perseon Corporation (the “Company”) entered into an asset purchase agreement (the “Asset Purchase Agreement”) with MedLink Technologies, LLC, a North Carolina corporation (“MedLink”), pursuant to which MedLink agreed to acquire substantially all of the Company’s assets for \$4.35 million. The Asset Purchase Agreement contains certain customary representations and warranties and covenants.

In connection with entry into the Asset Purchase Agreement, MedLink made an \$850,000 bid deposit, which the Company may use to fund its operations during the pendency of the Chapter 11 Case (as defined below), provided, that if MedLink is not the successful bidder at the auction, then the Company must return the bid deposit plus 5% interest on any amount of the bid deposit used by the Company to fund its operations.

The Asset Purchase Agreement is subject to a number of closing conditions, including, among others, (i) the approval of the Bankruptcy Court in the Chapter 11 Case, as described and defined in Item 1.03 below; (ii) the Company must pay on a current basis certain key vendors and employees; (iii) the accuracy of representations and warranties of the parties; and (iv) material compliance with the obligations set forth in the Asset Purchase Agreement.

The asset purchase pursuant to the Asset Purchase Agreement is expected to be conducted under the provisions of Section 363 of the Bankruptcy Code (as defined below) and will be subject to a marketing process, with proposed bidding procedures and receipt of a higher and better bid at auction. Upon entry by the Bankruptcy Court, the bidding procedures order will provide that (i) MedLink be the “stalking horse” bidder for the assets identified in the Asset Purchase Agreement; (ii) if MedLink is not the successful bidder at auction, the Company must pay a break-up fee to MedLink equal to \$217,500; (iii) to be a qualified bidder at the auction, a bidder must make an \$850,000 deposit, and (iv) any overbids at the auction must be no less than \$100,000.

The foregoing description of the Asset Purchase Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Asset Purchase Agreement, a copy of which is attached as Exhibit 2.1 to this report and is incorporated herein by reference.

### **License Agreement**

In order to induce MedLink to purchase substantially all of the Company’s assets pursuant to the Asset Purchase Agreement, on May 16, 2016, the Company and MedLink also entered into a license agreement (the “License”) providing MedLink with an exclusive license to sell the Company’s products and use the Company’s intellectual property in China, Hong Kong, Taiwan and Korea (the “License Territory”). The License contains certain customary representations and warranties and covenants.

MedLink paid the Company \$200,000 to receive the License. In addition, MedLink is required to pay the Company an annual royalty of 5% of net profits made in the License Territory by MedLink and any sublicensee of MedLink, up to a maximum of \$3,000,000, inclusive of the \$200,000 already paid. In addition, MedLink has the right to use any supplier used by the Company in connection with the production of its products in the License Territory.

The foregoing summary of the License does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the License Agreement, a copy of which is attached hereto as Exhibit 10.1 to this report and incorporated herein by reference.

### **Item 1.03 Bankruptcy or Receivership.**

On May 23, 2016, the Company filed a voluntary petition for relief under chapter 11 of 11 U.S.C. §§ 101 *et seq.* of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”). The Company’s caption and case number is *In re Perseon Corporation*, Case No. 16-24435 (Bankr. D. Utah) (the “Chapter 11 Case”). The Company plans to continue to operate its business as a “debtor-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

### **Item 7.01 Regulation FD Disclosure.**

#### **Modified SEC Reporting**

The Company plans to seek approval from the Securities and Exchange Commission (the “SEC”) to adopt a modified reporting program with respect to its reporting obligations under the federal securities laws, during the pendency of the Bankruptcy Case. In lieu of continuing to file Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K under Section 15(d) of the Securities Exchange Act of 1934, the Company would each month file with the SEC a Current Report on Form 8-K that will have attached to it the monthly financial reports required by the Bankruptcy Court. Such bankruptcy filings are generally made on the 20th day of each month covering the prior month’s operations. The Company will be conferring with the Office of the United States Trustee in Utah regarding the specific timing for filing monthly operating reports in the Chapter 11 Case. The Company will continue to file Current Reports on Form 8-K as is required by the federal securities laws.

#### ***Cautionary Note Regarding the Chapter 11 Case***

The Company’s stockholders are cautioned that trading in shares of the Company’s common stock or its publicly traded warrants during the pendency of the Chapter 11 Case will be highly speculative and will pose substantial risks. The Company expects that the currently outstanding shares of its common stock and the publicly traded warrants will be eventually cancelled and extinguished by the Bankruptcy Court. The holders of the Company’s common stock and publicly traded warrants may not receive any proceeds from the sale of substantially all of the Company’s assets due to the Company’s obligations to creditors and others. As a result, the Company expects that its currently outstanding stock has no value. Trading prices for the Company’s common stock may bear little or no relation to actual recovery, if any, by holders thereof in the Company’s Chapter 11 Case. Accordingly, the Company urges extreme caution with respect to existing and future investments in its common stock.

#### ***Cautionary Note Regarding Forward-Looking Statements***

This Current Report on Form 8-K contains forward-looking statements regarding future events and the Company’s future financial operations. These forward-looking statements are based on current expectations, estimates and projections about the business of the Company, including, but not limited to expectations regarding the Asset Purchase Agreement, the License and the Chapter 11 Case. These statements are based upon management’s current belief and certain assumptions made by management. Such forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those expressed in or implied by such forward-looking statements, including, but

not limited to, the potential adverse impact of the bankruptcy filing on our business, financial condition and results of operations, including our ability to maintain contracts and other customer and vendor relationships that are critical to our business; the actions and decisions of our creditors and other third parties with interests in the Chapter 11 Case; our ability to maintain liquidity to fund our operations during the Bankruptcy Case; our ability to obtain Bankruptcy Court approvals in connection with the Chapter 11 Case, including approvals relating to proposed sale bidding procedures and the proposed sale of assets; our ability to consummate any transactions once approved by the Bankruptcy Court and the time to consummation of such transactions; the timing and amount, if any, of distributions to the Company's stockholders; and competitive, economic, legal, political and technological factors affecting our industry, operations, markets, products and pricing. Readers should carefully review the risk factors and the information that could materially affect our financial results, described in our Annual Report on Form 10-K for the transition period ended December 31, 2014 and other reports filed with the Securities and Exchange Commission. Readers are cautioned to not place undue reliance on these forward-looking statements, which speak only as of the date of this report. The Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

**Item 9.01 Financial Statements and Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
2.1	Asset Purchase Agreement by and between Perseon, Inc. and MedLink Technologies, LLC dated as of May 17, 2016
10.1	License Agreement by and between Perseon, Inc. and MedLink Technologies, LLC dated as of May 16, 2016

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PERSEON CORPORATION

Date: May 23, 2016

By: /s/ Clinton E. Camell Jr.  
Name: Clinton E. Camell Jr.  
Title: Chief Executive Officer

**EXHIBIT INDEX**

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**ASSET PURCHASE AGREEMENT**

between

**PERSEON CORPORATION**

and

**MEDLINK TECHNOLOGIES, LLC**

dated as of

May 17, 2016

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## Asset Purchase Agreement

This Asset Purchase Agreement (this “**Agreement**”), dated as of May 17, 2016, is entered into between Perseon Corporation, a Delaware corporation (“**Seller**”) and MedLink Technologies, LLC, a North Carolina limited liability company (“**Buyer**”).

### **RECITALS**

WHEREAS, Seller is engaged in the business of developing, manufacturing, marketing and servicing systems to treat cancer and benign diseases using its flagship product, MicroThermX (the “**Business**”);

WHEREAS, Seller intends to file a voluntary petition under Chapter 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”), which Bankruptcy Court will then commence a case to administer the bankruptcy of Seller (the “**Bankruptcy Case**”); and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, substantially all the assets of the Business as defined herein, free and clear of liens, claims, encumbrances and interests pursuant to Section 363 of the Bankruptcy Code, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I. DEFINITIONS**

The following terms have the meanings specified or referred to in this **Article I**:

“**363 Sale Motion**” means a motion to be filed by Seller with the Bankruptcy Court seeking approval of the sale of the Purchased Assets pursuant to Section 363 of the Bankruptcy Code

“**Affiliate**” has the meaning set forth in Section 101 of the Bankruptcy Code.

“**Agreement**” has the meaning set forth in the preamble.

“**Allocation Schedule**” has the meaning set forth in **Section 2.06**.

“**Assigned Contracts**” has the meaning set forth in **Section 2.01(b)**.

“**Assignment and Assumption Agreement**” has the meaning set forth in **Section 3.02(a)(ii)**.

“**Assumed Liabilities**” has the meaning set forth in **Section 2.03**.

“**Auction**” means the Auction for the sale of substantially all of the assets used by Seller in its operation of the Business, as to be scheduled by the Bankruptcy Court in the Bid Procedures Order.

“**Bankruptcy Case**” has the meaning set forth in the recitals.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bid Procedures Motion**” means that certain motion to be filed by Seller seeking Bankruptcy Court approval of certain bidding procedures to be used in the Auction.

“**Bid Procedures Order**” means that certain order to be entered by the Bankruptcy Court approving the bidding procedures set forth in the Bid Procedures Motion.

“**Bill of Sale**” has the meaning set forth in **Section 3.02(a)(i)**.

“**Business**” has the meaning set forth in the recitals.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer’s Bid Date**” has the meaning set forth in **Section 2.07**.

“**Buyer’s Bid Deposit**” has the meaning set forth in **Section 2.07**.

“**Buyer Closing Certificate**” has the meaning set forth in **Section 8.03(c)**.

“**Closing**” has the meaning set forth in **Section 3.01**.

“**Closing Date**” has the meaning set forth in **Section 3.01**.

“**Collateral**” means all property and interests in property and proceeds thereof now owned or hereafter acquired by Buyer including: (a) Accounts; (b) Chattel Paper; (c) Deposit Accounts; (d) Documents; (e) General Intangibles (other than as excluded below); (f) Goods; (g) Instruments; (h) Intellectual Property; (i) Inventory; (j) Investment Property; (k) Letter-of-Credit Rights; (l) all of Seller’s corporate and trade names and styles; (m) Supporting Obligations; and (n) all Proceeds of the foregoing, each as defined herein or in Article 5, Article 8 or Article 9, as applicable, of the Uniform Commercial Code as in effect in the State of Utah. Notwithstanding

the foregoing, and unless authorized by the Bankruptcy Court, Collateral shall not include: (i) Seller's real property interests (including fee real estate, leasehold interests and fixtures); (ii) any General Intangibles or other rights arising under any contracts, instruments, licenses, leases or other documents (each, a "**Contract**") or any asset or property that is subject to any Contract thereof as to which the grant of a security interest would (A) constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of Seller under such Contracts, (B) constitute a violation of a valid and enforceable restriction in favor of a third party on such grant, unless and until any required consents shall have been obtained, (C) give any other party to such Contract the right to terminate its obligations thereunder or the Seller's use of such asset would result in a breach or violation of, or constitute a default under any such Contract, or (D) would result in the loss of use of such asset subject to any such Contract; (iii) any asset, the granting of a security interest in which would be void or illegal under any applicable governmental law, rule or regulation, or pursuant thereto would result in, or permit the termination of such asset or Seller's rights in such asset; or (iv) any claim or cause of action arising under sections 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a) of the Bankruptcy Code, other than avoidance actions under Section 549 of the Bankruptcy Code to the extent any portion of the Collateral is transferred in a manner not authorized by the Bankruptcy Court or the Bankruptcy Code.

"**Contracts**" means all legally binding written contracts, leases, mortgages, licenses, instruments, notes, commitments, undertakings, indentures and other agreements.

"**Disclosure Schedules**" means the Disclosure Schedules delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

"**Dollars or \$**" means the lawful currency of the United States.

"**Encumbrance**" means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

"**Excluded Assets**" has the meaning set forth in **Section 2.02**.

"**Excluded Liabilities**" means all liabilities of Seller other than the Assumed Liabilities.

"**Executory Contracts**" has the meaning set forth in **Section 2.01(b)**.

"**FDA**" means the U.S. Food and Drug Administration.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Unit.

"**Governmental Unit**" has the meaning set forth in Section 101 of the Bankruptcy Code.

“**Intellectual Property**” has the meaning set forth in Section 101 of the Bankruptcy Code and also includes Know-How of the Business and Person’s U.S. patent applications and letters patents, including (a) all divisionals, continuations and continuation-in-part applications that claim priority to any of the applications; (b) any foreign application corresponding to any application identified in (a) or other application, as well as any utility models and future reissues, re-examinations, extensions, continuations, continuations-in-part, divisions or substitute patent applications of the inventions as described in the patents and applications; and (c) each patent that issues or reissues from any application or patent.

“**Intellectual Property Agreements**” means all licenses, sublicenses and other agreements by or through which other Persons grant Seller or Seller grants any other Persons any exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used primarily in connection with the Business.

“**Intellectual Property Assets**” means all Intellectual Property that is owned by Seller and primarily used in connection with the Business.

“**Intellectual Property Assignment**” has the meaning set forth in **Section 3.02(a)(iii)**.

“**Know-How**” means the technical information and other knowledge in Seller’s records and possession associated with the Business (including trade secrets), drawings and other material relevant to manufacture, develop, improve, enhance, modify, or reformulate the Intellectual Property Assets or derivative works therefrom, and market the business associated with the Intellectual Property Assets.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Unit.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Units, including but not limited to the FDA.

“**Person**” has the meaning set forth in Section 101 of the Bankruptcy Code.

“**Purchase Price**” has the meaning set forth in **Section 2.05**.

“**Purchased Assets**” has the meaning set forth in **Section 2.01**.

“**Quality Systems**” means the documentation, records, training materials and procedures maintained by Seller to govern the methods used in, and the facilities and controls used for, the design, manufacture, packaging, labeling, storage, installation, and servicing of all finished medical devices intended for human use.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Sale Approval Order**” means an order entered by the Bankruptcy Court approving the sale of the Purchased Assets pursuant to Section 363 of the Bankruptcy Code.

“**Seller**” has the meaning set forth in the preamble.

“**Seller Closing Certificate**” has the meaning set forth in **Section 8.02(c)**.

“**Seller's Knowledge**” or any other similar knowledge qualification, means the actual knowledge of Clinton E. Carnell Jr. or David Green.

“**Signature Date**” means the date of signature of this Agreement by the party last signing it.

“**Successful Bidder**” has the meaning set forth in the Bid Procedures Motion.

“**Tangible Personal Property**” has the meaning set forth in **Section 2.01(e)**.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Transaction Documents**” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the 363 Sale Motion, the Bid Procedures Motion, and the other agreements, instruments and documents required to be delivered at the Closing.

## **ARTICLE II. PURCHASE AND SALE**

Section 2.01 **Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances, all of Seller's right, title and interest in, to all of the assets, properties and rights of Seller, to the extent that such assets,

properties and rights exist as of the Closing Date and primarily relate to the Business (collectively, the “**Purchased Assets**”):

(a) all inventory, finished goods, raw materials, work in progress, Quality Systems and all associated records and documentation, packaging, supplies, parts and other inventories of the Business;

(b) all Contracts set forth on **Section 2.01(b)** of the Disclosure Schedules (the “**Executory Contracts**”), and the Intellectual Property Agreements set forth on **Section 2.01(b)** of the Disclosure Schedules (collectively, the “**Assigned Contracts**”);

(c) all accounts or notes receivable of the Business together with all prepaid credits, advance payments, security deposits, charges, sums and fees to the extent related to the Business and the Purchased Assets except the cash deposit Seller has paid to secure company credit cards, D&O and commercial insurance prepaids and deposits, rental lease deposits including storage units, tax refunds and retainers and deposits for professionals including attorneys and accountants;

(d) Know-How of the Business in Seller’s records and possession, and all Intellectual Property Assets, including but not limited to (i) all trade names and styles of Seller including the trade name “Perseon Corporation,” (ii) all of Seller’s URL’s including the internet domain at <http://www.perseonmedical.com>, and (iii) the Intellectual Property Assets listed on **Section 2.01(d)** of the Disclosure Schedules;

(e) all approvals, permits, licenses and other authorities from the FDA related to the Business;

(f) all furniture, fixtures, equipment, supplies and other tangible personal property of the Business listed on **Section 2.01(f)** of the Disclosure Schedules (the “**Tangible Personal Property**”);

(g) all Permits listed on **Section 2.01(g)** of the Disclosure Schedules;

(h) all of Seller’s rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(i) copies of all (i) books and records, including books of account, ledgers and general, financial and accounting records for the period beginning January 1, 2015 to the date hereof, other than books and records set forth in **Section 2.02(c)**, and (ii) machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Unit), sales material and records, strategic plans, internal

financial statements and marketing and promotional surveys, material and research, that primarily relate to the Business or the Purchased Assets; and

- (j) all goodwill associated with any of the assets described in the foregoing clauses.

Section 2.02 **Excluded Assets.** Other than the Purchased Assets subject to **Section 2.01**, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the "**Excluded Assets**"). Excluded Assets include the following assets and properties of Seller:

- (a) all cash and cash equivalents, bank accounts and securities of Seller;
- (b) all Contracts that are not Assigned Contracts;
- (c) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;
- (d) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (e) all Tax assets (including duty and Tax refunds and prepayments) of Seller;
- (f) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;
- (g) all accounting software and computer systems; and
- (h) the rights which accrue or will accrue to Seller under the Transaction Documents.

Section 2.03 **Assumed Liabilities.** Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due any and all liabilities and obligations of Seller arising out of or relating to the Business or the Purchased Assets on or after the Closing, other than the Excluded Liabilities (collectively, the "**Assumed Liabilities**"), including, without limitation, the following:

- (a) all liabilities and obligations arising under or relating to the Assigned Contracts;

(b) all liabilities and obligations for Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities prorated for any taxable period (or portion thereof) arising on or after the Closing Date; and

(c) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the Business and the Purchased Assets on or after the Closing.

Section 2.04 **Excluded Liabilities.** Buyer shall not assume and shall not be responsible to pay, perform or discharge the Excluded Liabilities.

Section 2.05 **Purchase Price.** The aggregate purchase price for the Purchased Assets shall be \$4,350,000.00 (the "**Purchase Price**"), plus the assumption of the Assumed Liabilities. The Purchase Price shall include the amount of Buyer's Bid Deposit. The Purchase Price shall be paid by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer no later than two (2) days prior to the Closing Date.

Section 2.06 **Allocation of Purchase Price.** The Purchase Price (including any Assumed Liabilities treated as consideration for the Purchased Assets for Tax purposes) shall be allocated among the Purchased Assets as proposed in writing by Buyer and approved by Seller prior to the Closing Date (the "**Allocation Schedule**"). Seller and Buyer agree to file their respective IRS Forms 8594 and all federal, state and local Tax Returns in accordance with the Allocation Schedule.

Section 2.07 **Buyer's Bid Deposit.** As described in the Bid Procedures Order, Buyer shall be obliged to make payment as a bid deposit to the Seller of \$850,000 ("**Buyer's Bid Deposit**") by wire transfer of immediately available funds to an account designated in writing by the Seller not later than five (5) days after the Signature Date. Upon entry of the Bid Procedures Order, Seller shall be permitted to use Buyer's Bid Deposit to fund its operations during the pendency of the Bankruptcy Case. Unless Buyer is the winning bidder for the Purchased Assets at the Auction, to the extent this Agreement is terminated in accordance with **Section 9.01**, Seller shall be obligated to return Buyer's Bid Deposit to Buyer within five (5) days of the termination of this Agreement plus pay five percent (5%) interest on any amounts of Buyer's Bid Deposit used by Seller to fund its operations from the date of the deposit of Buyer's Bid Deposit until the date of termination of this Agreement in accordance with **Section 9.01** ("**Seller's Repayment Obligation**"). Buyer's Bid Deposit shall be secured by a senior secured, super-priority lien in the Collateral. This security interest shall be perfected upon the entry of the Bid Procedures Order without the need for the Seller or the Buyer to file any UCC-1 financing statements, notices of lien or any similar document to perfect its security interests under the UCC. Upon the entry of the Bid Procedures Order, the security interests created under this Agreement shall constitute perfected security interests in the Collateral in favor of the Buyer senior and prior to all other liens. Upon the payment in full in cash of Seller's Repayment Obligation, the security interests granted herein shall automatically terminate with respect to all of the

Collateral. Upon any such termination, the Buyer will, at the Seller's sole expense, deliver to the Seller, without any representations, warranties or recourse of any kind whatsoever, all Collateral held by the Buyer hereunder, and execute and deliver to the Seller such documents as the Seller shall reasonably request to evidence such termination.

### **ARTICLE III. CLOSING**

Section 3.01 **Closing**. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Dorsey & Whitney LLP, 136 S. Main St, Suite 1000, Salt Lake City, UT 84101 on the day after all of the conditions to Closing set forth in **Article VIII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date**".

#### Section 3.02 **Closing Deliverables**.

- (a) At the Closing, Seller shall deliver to Buyer the following:
  - (i) a bill of sale in a form mutually acceptable to Buyer and Seller (the "**Bill of Sale**") and duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Buyer;
  - (ii) an assignment and assumption agreement in a form mutually acceptable to Buyer and Seller (the "**Assignment and Assumption Agreement**") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;
  - (iii) an assignment agreement in a form mutually acceptable to Buyer and Seller, and duly executed by Seller, effecting the assignment of the Intellectual Property Assignments to Buyer (the "**Intellectual Property Assignment**").
  - (iv) the Seller Closing Certificate; and
  - (v) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may reasonably be required to give effect to this Agreement.
- (b) At the Closing, Buyer shall deliver to Seller the following:
  - (i) the Purchase Price;

- (ii) the Assignment and Assumption Agreement duly executed by Buyer; and
- (iii) the Buyer Closing Certificate.

**ARTICLE IV.  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this **Article IV** are true and correct as of the date hereof.

**Section 4.01 Organization and Qualification of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

**Section 4.02 Authority of Seller.** Subject to approval of the Bankruptcy Court, Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 4.03 Title to Purchased Assets.** Subject to approval of the Bankruptcy Court pursuant to the Sale Approval Order and upon satisfaction of Seller's Repayment Obligation, Seller has the legal right and authority to sell, convey and transfer the Purchased Assets, free and clear of Encumbrances.

**Section 4.04 No Other Representations and Warranties.** Seller conveys the Purchased Assets as-is, where-is and if-is, and disclaims any representation or warranty arising from statute or otherwise in Law, including any warranty of merchantability or fitness for a particular purpose. Except for statements contained in this **Article IV** (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any express or implied representation or warranty, either written or oral, on behalf of Seller,

including any representation or warranty as to the accuracy or completeness of any information regarding the Purchased Assets furnished or made available to Buyer and its Representatives (including any information, documents or material made available to Buyer in any form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business or the Purchased Assets.

**ARTICLE V.  
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this **Article V** are true and correct as of the date hereof.

Section 5.01 **Organization and Authority of Buyer.** Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of North Carolina.

Section 5.02 **Authority of Buyer.** Buyer has all necessary limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 **No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of formation, by-laws, or other similar organizational documents of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order,

declaration or filing with, or notice to, any Governmental Unit is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 5.04 **Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 5.05 **Solvency.** Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 5.06 **Independent Investigation.** Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in **Article IV** of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in **Article IV** of this Agreement (including the related portions of the Disclosure Schedules).

## **ARTICLE VI. BANKRUPTCY COURT PROCEEDINGS**

Section 6.01 **Bidding Procedures.** Promptly upon the filing of the Bankruptcy Case, Seller shall file the Bid Procedures Motion with the Bankruptcy Court, after which the Court will enter the Bid Procedures Order approving the bid procedures proposed in the Bid Procedures Motion. Buyer has reviewed the Bid Procedures Motion and finds its form and terms acceptable. Seller understands and agrees that Buyer's willingness to enter into the transactions contemplated herein are conditioned upon the prompt filing with and approval by the Bankruptcy Court of the Bid Procedures Motion.

Section 6.02 **Bid Protections.** The Bid Procedures Motion shall provide, among other things:

- (a) Buyer shall be the stalking horse bidder for substantially all of the assets of Seller;
- (b) If Buyer is not the successful bidder at the Auction, as approved by the Bankruptcy Court, because of a higher and better offer, then Buyer shall be paid at Closing a break-up fee of \$217,500.00 (five percent (5%) of the stalking horse purchase price offered by Buyer);
- (c) To be a qualified bidder at the Auction, a bidder must make a \$850,000 bid deposit accompanied by a written initial overbid offer (described in subpart (d) below), together with proof of ability to fund the total purchase price and an executed asset purchase agreement in form and substance substantially similar to this Agreement;
- (d) The initial overbid, if any, shall be no less than \$100,000 higher than Buyer's initial bid plus the break-up fee described in [Section 6.02\(b\)](#); and
- (e) Subsequent overbids, if any, shall be in increments of no less than \$100,000.

Section 6.03 **Assumption of Executory Contracts.** In connection with Buyer's purchase of the Purchased Assets, Buyer wishes to assume the Executory Contracts. Seller shall elect to assume the Executory Contracts and assign such assumed Executory Contracts to Buyer in accordance with the procedures set forth in Section 365 of the Bankruptcy Code. As part of these procedures, Buyer, as assignee of the Executory Contracts, shall provide adequate assurance that any defaults under the Executory Contracts will be promptly cured and future obligations will be performed. In order to provide adequate assurance, on or prior to the date Seller assumes and assigns the Executory Contracts, Buyer shall pay directly to counterparties all amounts necessary to cure any defaults under the Executory Contracts, up to an aggregate value not exceeding \$50,000 on the Closing Date. Buyer shall then perform all future obligations of Seller under the Executory Contracts in accordance with the terms thereof.

Section 6.04 **Sale Approval Order.** The Sale Approval Order shall be reasonably acceptable in form and substance to Buyer and shall include provisions, among others (i) providing that Buyer shall not incur any liability as a successor to Seller unless such liability is expressly assumed and to the extent permitted by applicable law permanently enjoining each and every holder of any claim for such liabilities from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or encumbrance against Buyer or the Purchased Assets related thereto, (ii) approving the sale of the Purchased Assets to Buyer on the terms and conditions set forth in this Agreement, or such higher and better terms and conditions

offered by Buyer at the Auction, and authorizing Seller to proceed with this transaction, (iii) stating that any objections timely filed with respect to the sale of the Purchased Assets, which have not been withdrawn, are overruled or the interests of such objections have been otherwise satisfied or adequately provided for by the Bankruptcy Court, (iv) finding that the Purchase Price represents fair value for the Purchased Assets, (v) finding that the sale is in the best interests of Seller's estate and creditors, (vi) finding that Buyer is a good faith purchaser of the Purchased Assets under Section 363(m) of the Bankruptcy Code and that the provisions of Section 363(m) of the Bankruptcy Code have not been violated, (vii) providing that the sale of the Purchased Assets to Buyer shall be free and clear of all liens, claims, interests, obligations and encumbrances whatsoever under Section 363 of the Bankruptcy Code and any other applicable sections of the Bankruptcy Code, (viii) providing that the Bankruptcy Court shall retain jurisdiction for the purpose of enforcing the provisions of the Sale Approval Order including, without limitation, compelling delivery of the Purchased Assets to Buyer and protecting Buyer against any liens, claims, interests, obligations and encumbrances against Seller or the Purchased Assets, and (ix) authorizing and directing Seller to execute, deliver, perform under, consummate and implement this Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the foregoing. Seller shall use commercially reasonable efforts to obtain entry of the Sale Approval Order in the form described hereto. To the extent that there is any inconsistency between this paragraph and the Sale Approval Order, the Sale Approval Order shall govern.

#### **ARTICLE VII. COVENANTS**

Section 7.01 **Conduct of Business Prior to the Closing.** To the extent permitted by orders and directives of the Bankruptcy Court and applicable provisions of the Bankruptcy Code, between the date of this Agreement and the Closing, Seller shall use its commercially reasonable efforts to preserve and maintain the Purchased Assets. Seller shall consult with Buyer prior to implementing any decisions reasonably anticipated to materially and adversely affect any of the Purchased Assets.

Section 7.02 **Other Bankruptcy Covenants.** Seller shall promptly make all filings, take all actions, and use commercially reasonable efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the sale of the Purchased Assets consistent with the terms of this Agreement. In the event that any third party appeals, or requests a stay pending appeal, from any order relating to the transaction, Seller shall promptly notify Buyer of such appeal or stay request. Seller shall also provide Buyer with written notice of any motion, application, brief or other pleading filed in connection with any appeal relating to the transactions contemplated hereunder. Neither party shall willfully take any action that could reasonably be expected to have the effect of delaying, impairing or impeding the receipt of any authorizations, orders and approvals of the Bankruptcy Court.

Section 7.03 **Closing Conditions.** From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the conditions to closing set forth in **Article VIII** hereof.

Section 7.04 **Notices.** Seller shall provide all notices required under the Bankruptcy Code to all parties in interest to the Bankruptcy Case, including notices of the pendency of and all hearings before the Bankruptcy Court regarding the motions for entry of the Sale Approval Order and to assume the Executory Contracts.

#### **ARTICLE VIII. CONDITIONS TO CLOSING**

Section 8.01 **Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

- (a) The Bankruptcy Court shall have entered a final order granting Seller's motion for entry of the Sale Approval Order.
- (b) No Governmental Unit shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.
- (c) During the course of the Bankruptcy Case until Closing, Seller shall have paid on a current basis all sums due to the vendors and employees listed on **Section 8.01(c)** of the Disclosure Schedules.
- (d) Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Units referred to in [Section 5.03](#), in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

Section 8.02 **Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

- (a) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(b) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in **Section 3.02(a)**.

(c) Seller shall have delivered a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in **Section 8.02(a)** and **Section 8.02(b)** have been satisfied (the “**Seller Closing Certificate**”).

Section 8.03 **Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(b) Buyer shall have delivered to Seller the Purchase Price, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in **Section 3.02(b)**.

(c) Buyer shall have delivered a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in **Section 8.03(a)** and **Section 8.03(b)** have been satisfied (the “**Buyer Closing Certificate**”).

#### **ARTICLE IX. TERMINATION**

Section 9.01 **Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Seller if Buyer is not the Successful Bidder at the Auction;

(c) by Seller by written notice to Buyer if Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in [Article VIII](#) and such breach, inaccuracy or failure cannot be cured by Buyer within 30 days after written notice of such breach; or

(d) by Buyer or Seller in the event that:

- (i) the Bankruptcy Court denies, without opportunity to cure deficiencies, Seller's Bid Procedures Motion, motion for entry of the Sale Approval Order;
- (ii) the Bankruptcy Case is dismissed by the Bankruptcy Court or converted to a Chapter 7 case;
- (iii) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or
- (iv) any Governmental Unit shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement.

Section 9.02 **Effect of Termination.** Other than the parties' obligations under **Section 2.07** and **Section 10.02**, the provisions of this Agreement shall not survive termination of this Agreement.

#### **ARTICLE X. MISCELLANEOUS**

Section 10.01 **Survival.** Seller's statements, covenants and agreements contained in this Agreement shall not survive the Closing Date.

Section 10.02 **Expenses.** Except as otherwise expressly provided, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred. For the avoidance of doubt, Buyer shall not be liable for any costs or expenses in relation to the Bankruptcy Case.

Section 10.03 **Timing.** All references to "days" or other timing methods or procedures in this Agreement shall be subject to Rule 9006 of the Federal Rules of Bankruptcy Procedure.

Section 10.04 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 10.04**):



legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.06 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.07 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, 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 a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.08 **Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.09 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.10 **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.11 **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto and, as necessary, approved by the Bankruptcy Court. No waiver by any party of any of the

provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.12 **Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah and the Bankruptcy Code without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction). Any dispute regarding the interpretation or enforcement of this Agreement shall be heard by the Bankruptcy Court, applying the laws of the State of Utah, and the parties hereby irrevocably consent to the jurisdiction of the Bankruptcy Court for all such matters.

Section 10.13 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.14 **Non-recourse.** This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

*[Signature Page Follows]*

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

PERSEON CORPORATION

By: /s/ Clinton E. Camell Jr.

Name: Clinton E. Camell Jr.

Title: CEO

MEDLINK TECHNOLOGIES, LLC

By: /s/ David Chen

Name: David Chen

Title: Director

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**LICENSE AGREEMENT**

This license agreement (the "Agreement"), dated las of May 16, 2016, is entered into between Perseon Corporation, a Delaware corporation having a principal place of business at 391 Chipeta Way, Suite F, Salt Lake City, Utah 84108 ("Licensor"), and Medlink Technologies, LLC, a North Carolina limited liability company, having a principal place of business at 16 Portofino Place, Durham, NC 27707, ("Licensee").

**RECITALS**

WHEREAS, Licensor is engaged in the business of developing, manufacturing, marketing and servicing systems to treat cancer and benign diseases using its technology including, but not limited to, MicroThermX ("the Business");

WHEREAS, Licensor does not currently engage in the Business in the Territory (as defined below) and does not have the financial and regulatory ability to engage in the Business in the Territory;

WHEREAS Licensee wishes to license from Licensor its technology and intellectual property subject to the terms and conditions set forth herein,

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

**ARTICLE I.****DEFINITIONS**

**1.1 Licensed Patents** means Licensor's U.S. Patent Applications and Letters Patents and: (a) all divisionals, continuations and continuation-in-part applications that claim priority to any of the applications; (b) any foreign application corresponding to any Patent Applications and Letter Patents or application identified in (a) as well as any utility models and future reissues; re examinations, extensions, continuations, continuations-in-part, divisions or substitute patent applications of the inventions as described in the patents and applications; and (c) each patent that issues or reissues from any Application or application identified in (a) and (b) including but not limited to matters listed in Appendix I.

**1.2 Licensed Intellectual Property** means any and all intellectual property rights, including without limitation, rights associated with the Licensed Patents, any utility models, registered and unregistered trademarks, registered and unregistered design rights, copyright protected materials and neighboring rights, any applications in relation to any of the foregoing rights, including but not limited to matters listed in Appendix I, necessary in carrying out the Business.

**1.3 Licensed Product** means any product sold or offered for sale by Licensor prior to and as of the Effective Date specified in Article 1.6 including but not limited to the products listed on Appendix II.

**1.4 Know-How** means the technical information and knowledge (including trade secrets), drawings (including but not limited to technical drawings, files, schematics), bill of materials, design history files, manufacturing processes (including but not limited to standard operating procedures, manuals) and other material, whether in physical form or electronic, relevant to manufacture, develop, improve, enhance, modify, or reformulate the Licensed Products and/or Licensed Technology, derivative works of the Licensed Products and/or Licensed Technology, and market business associated with the Licensed Product or the Licensed Technology (as specified in Article 1.5), owned or controlled by Licensor, and/or necessary in carry out the Business.

**1.5 Licensed Technology** means any information including, but not limited to, the Licensed Patents, Licensed Intellectual Property and Know-How: (a) created prior to the Effective Date; (b) owned by Licensor; (c) necessary to practice inventions claimed in patents and/or patent applications included in the Licensed Patents; (d) necessary to practice the Licensed Technology; and (e) necessary to carry out the Business in the Territory as specified in Article 1.8.

**1.6 Effective Date** means the date on which the last signature of execution is entered below between Licensor and Licensee.

**1.7 Prosecution Costs** means any and all fees, costs and charges in relation to procurement and maintenance of a copyright, patent, trademark, or design including, but not limited to, prosecution and/or maintenance fees, registration fees, grant fees, drafting and/or redrafting costs, administrative costs such as filing, search, extension and renewal costs and product licensing, registration and approval costs.

**1.8 Territory** means the People's Republic of China, Hong Kong, Taiwan and Korea.

## ARTICLE II

### LICENSE GRANT

**2.1 License Grant.** Licensor hereby grants to Licensee a perpetual, exclusive license under the Licensed Technology, including but not limited to the Licensed Patents, to make, have made for it, use and sell Licensed Products in the Territory during the Term of this Agreement,

and the right to use the Licensed Technology to make, use, have made for it, develop, any other products in the Territory during the Term of this Agreement.

**2.2 Sublicensing.** Within the Territory only, Licensee has the right to grant Sublicense Agreements under the Licensed Patents and Licensed Technology and to use the Licensed Patents and Licensed Technology consistent with the terms of this Agreement. Licensee will provide notice to Licensor of any Sublicense Agreement within ten (10) business days of Licensee's entry into any such Sublicense Agreement.

**2.3 Suppliers and vendors.** Licensor hereby grants to Licensee the right to use any supplier and/or vendor used by Licensor in connection with the manufacture and/or production of the Licensed Product, and/or in connection with use of the Licensed Technology, and/or in connection with the Business, within the Territory. Licensor shall provide to Licensee the list of such suppliers and vendors used by Licensor, as specified herein, within seven (7) days of the Effective Date. Licensor shall notify such suppliers and vendors of Licensee's right to use the suppliers and/or vendors, as specified herein, within thirty (30) days of the Effective Date.

**2.4 Payment and Royalties.** The license granted in Article 2.1 shall commence upon receipt by Licensor of US\$200,000 (the "Initial Payment"), which Initial Payment shall be made within one (1) business day of the Effective Date. Thereafter, Licensee shall pay on an annual basis to Licensor, starting a year after the Initial Payment, a royalty of 5% of net profits in the Territory made by Licensee pursuant to the License Agreement; provided, however, that such royalty payments shall cease to be paid once Licensee has paid an aggregate of US\$3,000,000.00 to Licensor, inclusive of the Initial Payment.

### ARTICLE III

#### FEES

**3.1** Licensee, its successors, and/or assignees, if any, shall have the right but not the obligation to pay all Prosecution Costs necessary to maintain the Licensed Intellectual Property and avoid abandonment or lapse of any of matter associated with the Licensed Intellectual Property.

[continued on next page]

## ARTICLE IV

### INTELLECTUAL PROPERTY MATTERS

**4.1 Intellectual Property Prosecution.** In the event Licensor, its successors, and/or assignees, if any, intends to discontinue prosecution in any jurisdiction, it will so inform Licensee in writing and Licensee will thereafter be solely entitled to prosecute and maintain the application, patent, and/or registration in its own name and at its own expense in the particular jurisdiction. This subparagraph shall not affect the rights to use granted to Licensee under this Agreement and it shall not affect the rights with respect to the Licensed Patents and/or Licensed Technology in any other jurisdiction.

**4.2 Infringement of the Licensed Technology.** Licensor, its successors, and/or assignees, if any, will promptly inform Licensee of any suspected infringement of a Licensed Patent and/or other right(s) associated with the Licensed Technology by a third party.

**4.3 Right to bring action.** Licensee has the right, but not the obligation, to bring at its own expense an action for infringement of the Licensed Intellectual Property, including the Licensed Patents, in the Territory.

**4.4 Right to join action.** Licensor (its successors and/or assignees) or Licensee shall have the right to join, at its own expense, any infringement action brought by the other for infringement of the Licensed Patents and/or the Licensed Technology. In the case that any court, upon motion of a third party or otherwise, rules that either Licensor (its successors and/or assignees) or Licensee is a necessary party to any action enforcing of any of the Licensed Patents and/or the Licensed Technology, that respective party at its own costs and expense, agrees to join in any such action upon request by the other, and each party, Licensor (its successors and/or assignees) or Licensee, hereby agrees to participate for standing in any such action. If only one of Licensor (its successors and/or assignees) or Licensee brings an action for infringement of any of the Licensed Patents and/or the Licensed Technology without participation of the other, then the party bringing the action alone shall bear all expenses.

## ARTICLE V

### TECHNOLOGY TRANSFER AND SUPPORT

**5.1 Technical Support.** As of the date of the Initial Payment and for thirty (30) days thereafter, Licensor will provide technical support to Licensee, for all Licensed Technology, including all such technology initially delivered to Licensee and all enhancements. Such technical support shall be sufficient to quickly enable Licensee to develop, use and manufacture the Licensed Product, implement the Licensed Technology, and

to enable Licensee to achieve its commercial objectives as soon as possible.

## ARTICLE VI

### GOVERNMENT LAWS AND REGULATIONS

**6.1 Government Approvals.** Licensee may, at its own expense, seek and obtain any or all necessary government approvals for the development, production, distribution, sale and use of any Licensed Product in the Territory.

**6.2 Government Registration.** If this Agreement is required by any law in the Territory to be either approved or registered with any governmental agency, Licensee may but shall not be required to take the necessary steps to comply with government registration, at its own expense.

**6.3 Export Control.** Licensor (its successors and/or assignees) and Licensee shall both observe all applicable laws governing export of the Licensed Products including, but not limited to, the Export Administration Regulations, the International Traffic in Arms Regulations and the various economic sanctions regulations administered by the U.S. Department of Treasury (collectively, "Export Laws").

## ARTICLE VII

### WARRANTIES AND DISCLAIMERS

**7.1 Licensor Representations and Warranties.** Licensor represents and warrants to Licensee that to the knowledge of Licensor:

- a) Licensor has the right to grant the licenses hereunder, and
- b) Licensor has not knowingly granted and will not knowingly grant licenses or other rights to the Licensed Technology, including the Licensed Patents in the Territory, that are in conflict with the terms and conditions in the Agreement.

**7.2 Disclaimer.** Licensee is not liable for any damages or any liability to third parties or for any costs or expenses of any kind in connection with the licenses granted herein.

**ARTICLE VIII**

**DELIVERABLES**

**8.1** Licensor shall commence to deliver to Licensee, all physical and electronic files and documents related to and in accordance with the Licensed Technology as specified in Article 1.5 (the "delivery"), within one (1) business day of the Initial Payment; and shall in good faith endeavor to complete delivery within thirty (30) days following the Initial Payment.

**ARTICLE IX**

**TERM AND TERMINATION**

**9.1** This Agreement shall enter into force and shall remain in force on the Effective Date perpetually unless terminated by Licensee by giving no less than 30 days' prior written notice.

**ARTICLE X**

**NOTICE**

**10.1** All notices under this Agreement are deemed fully given when written, addressed and sent as follows:

If to Seller:

Perseon Corporation  
391 Chipeta Way  
Salt Lake City, UT 84108  
E-mail: ccarnell@perseonmedical.com  
          dgreen@perseonmedical.com  
Attention: Clinton E. Carnell Jr.  
          David Green

with a copy to:

Dorsey & Whitney LLP  
136 S. Main St., Suite 1000  
Salt Lake City, UT 84101  
Facsimile: (801) 933-7373  
E-mail: taylor.nolan@dorsey.com  
Attention: Nolan S. Taylor

If to Buyer:

MedLink Technologies, LLC  
16 Portofino Place  
Durham, NC 27707  
E-mail: David@medlinktechnologies.com  
Attention: David Chen

with a copy to:

Troutman Sanders LLP  
5 Park Plaza, Suite 1400  
Irvine, CA 92614  
Facsimile: 949-622-2739  
Email: penelope.parnes@troutmansanders.com  
Attention: Penelope Parnes

**Section 10.2 Replacement Notice.** The parties may designate in writing a replacement address and contact person to which notices may be provided.

## ARTICLE XI

### GENERAL PROVISIONS

**11.1 Choice of Law.** The Agreement will be construed and enforced in accordance with laws of the State of Utah.

**11.2 Effect of Headings.** The Article headings of this Agreement appear only as a matter of convenience and in no way define, limit, constrain, or describe the scope or the intent of such Article, nor in any way affect the interpretation of this Agreement.

In witness whereof, the parties have executed this License Agreement as of the date first set forth above.

PERSEON CORPORATION

By: /s/ Clinton E. Carnell Jr.  
Name: Clinton E. Carnell Jr.  
Title: CEO

MEDLINK TECHNOLOGIES, LLC

By: /s/ David Chen  
Name: David Chen  
Title: Director

