

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Mark G. DeGiacomo, Esq., as Chapter 11 Trustee of Starbak Incorporated	05/27/2010
RECEIVING PARTY DATA	
Name:	Starstream, LLC
Street Address:	52 Waltham Street
City:	Lexington
State/Country:	MASSACHUSETTS
Postal Code:	02421
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	7043528
CORRESPONDENCE DATA	
Fax Number:	(781)622-5933
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	781-622-5930
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Address Line 4:	Waltham, MASSACHUSETTS 02451
ATTORNEY DOCKET NUMBER:	STARSTREAM PATENT ASG
NAME OF SUBMITTER:	Sean D. Detweiler
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ASSIGNMENT OF PATENT

WHEREAS, Starbak Communications, Inc., (hereinafter "DEBTOR"), a corporation organized and existing under the laws of the State of Delaware, has acquired rights in the subject matter disclosed in United States Patent 7,043,528, entitled Systems and Methods for Connecting Video Conferencing to a Distributed Network, filed August 12, 2005 (hereinafter the "Property");

WHEREAS, an involuntary petition was filed against DEBTOR on January 29, 2010, commencing an involuntary Chapter 11 Case under 11 U.S.C. §§101 et seq., with the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court"), Case No. 10-10856 (WCH);

WHEREAS, the United States Trustee appointed Mark G. DeGiacomo, Esq. as the Chapter 11 Trustee (in such capacity, the "ASSIGNOR");

WHEREAS, ASSIGNOR and Starstream, LLC (hereinafter "ASSIGNEE"), a limited liability company organized and existing under the laws of the State of Delaware, entered into an Asset Purchase Agreement dated as of April 9, 2010 (the "Asset Purchase Agreement"), setting forth the terms and conditions on which ASSIGNEE has acquired sole ownership of the Property;

WHEREAS, pursuant to an "Order (A) Authorizing Sale of Substantially All of Debtor's Assets Free and Clear Of All Liens, Claims, Interests and Other Encumbrances and (B) Approving Assumption And Assignment of Certain Executory Contracts" entered by the Bankruptcy Court on May 19, 2010 the ASSIGNOR is authorized, empowered and directed, among other things, to complete the transactions contemplated by the Asset Purchase Agreement and execute and deliver this instrument;

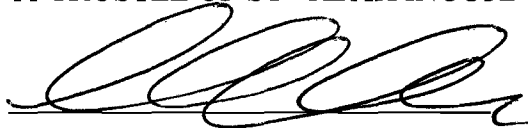
NOW, THEREFORE, to all whom it may concern be it known that for and in consideration of said agreements and of other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNOR has sold, assigned and transferred and by these presents does hereby sell, assign and transfer unto said ASSIGNEE, its successors, assigns and legal representatives, its entire right, title and interest in and throughout the United States of America, its territories and all foreign countries, in and to said inventions as described in said Property, together with its entire right, title and interest in and to any Letters Patent as may currently exist or as may issue thereon, and any reissue, continuation, divisional and foreign counterpart applications thereof as well as any Letters Patent issued or issuing thereon, and including the right to claim priority under any applicable statute, treaty or convention based on said application; said inventions, said Property, and said Letters Patent to be held and enjoyed by said ASSIGNEE for its own use and behalf and for its successors, assigns and legal representatives, to the full end of the term for which said Letters Patent may be granted as fully and entirely as the same would have been held by ASSIGNOR had this assignment not been made;

ASSIGNOR hereby conveys all rights arising under or pursuant to any and all international agreements, treaties or laws relating to the protection of industrial property by filing any such applications for Letters Patent, all choses in action pertaining to the Property, including the right to sue for and collect damages and other recoveries for past infringement thereof, all rights to initiate proceedings before government and administrative bodies, and all files, records and other materials arising from the prosecution, exploitation, or defense of rights and registrations pertaining to said Property. ASSIGNOR hereby acknowledges that this assignment, being of its entire right, title and interest in and to said invention, carries with it the right in ASSIGNEE to apply for and obtain from competent authorities in all countries of the world any and all Letters Patent by attorneys and agents of ASSIGNEE'S selection and the right to procure the grant of all such Letters Patent to ASSIGNEE for its own name as assignee of the entire right, title and interest therein;

ASSIGNOR hereby further agrees for itself and its executors and administrators to execute upon ASSIGNEE's request any other lawful documents and likewise to perform any other lawful acts which may be deemed necessary by ASSIGNEE to secure fully the aforesaid inventions and Property to said ASSIGNEE, its successors, assigns and legal representatives, but at its or their expense and charges, including the execution of applications for patents in foreign countries, and the execution of substitution, reissue, divisional or continuation applications and preliminary or other statements and the giving of testimony in any interference or other proceeding in which said inventions, the Property or any applications or Letters Patent directed thereto may be involved;

ASSIGNOR:

MARK G. DEGIACOMO, ESQ., AS CHAPTER
11 TRUSTEE OF STARBAK INCORPORATED



By: Mark G. DeGiacomo,
Title: Chapter 11 Trustee, not Personally

State of Massachusetts
County of Suffolk

On this 27th day of May, 2010, before me, the undersigned notary public, personally appeared Mark G. DeGiacomo, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document in my presence.

(SEAL)


Notary Public

My commission expires: Oct. 19, 2012

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

_____)	
)	
In re)	
)	
STARBAK INCORPORATED,)	
)	
)	Chapter 11
)	Case No. 10-10856(WCH)
Debtor)	
)	
_____)	

ORDER (A) AUTHORIZING SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND OTHER ENCUMBRANCES AND (B) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS

Upon the motion [Docket No. 60] (the "Sale Motion") of Mark G. DeGiacomo, Chapter 11 Trustee ("Trustee") of Starbak Incorporated (the "Debtor") seeking, inter alia, entry of an order pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) approving the sale of substantially all of the assets of the Debtor and (b) approving the assumption and assignment of certain executory contracts in connection with the sale; and the Sale Motion, the Notice of Sale and the Notice of (i) Proposed Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (ii) amounts necessary to Cure Defaults, dated April 22, 2010 (the "Contract Notice") having been served as set forth therein; and it appearing that proper and adequate notice of the Sale Motion and Contract Notice has been given and that no other or further notice is required; and after due deliberation thereon; and good and sufficient cause appearing therefor,

NOW, THEREFORE, THE COURT HEREBY FINDS THAT:

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
- C. Capitalized terms used herein that are not otherwise defined in this Order shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of April 9, 2010 (the "Asset Purchase Agreement")¹, between the Trustee and Starstream LLC (the "Purchaser"), or, if not otherwise defined in the Asset Purchase Agreement or this Order, the meanings ascribed to such terms in the Sale Motion.
- D. On April 15, 2010, the Court entered its Order Approving (A) Bidding Procedures; (B) the Form and Manner of Notice of the Sale of Property and Notice of Assumption and Assignment of Contracts, (C) Expense Reimbursement, and (D) Overbid Requirement [Docket No. 77] (the "Bidding Procedures Order"). The Bidding Procedures Order approved certain bidding procedures (the "Bidding Procedures") for the sale of the Debtor's assets.
- E. The Trustee has sufficiently marketed the Purchased Assets that are subject to the Asset Purchase Agreement in good faith under the circumstances to secure the highest and best offer therefor. In addition, the Trustee served the Bidding Procedures Order and the Sale Motion on each of the entities known to the Trustee to have expressed an interest in the Purchased Assets. The terms and conditions set forth in the Asset Purchase Agreement, and the transactions contemplated thereby, represent fair and reasonable terms and conditions, including

¹ A copy of the Asset Purchase Agreement without its exhibits and schedules is attached hereto as Exhibit A. Capitalized terms used, but not defined, herein shall have the meanings set forth in the Asset Purchase Agreement or the Sale Motion, as the case may be.

the amount of the purchase price, and constitute the highest and best offer obtainable for the Purchased Assets and are fair and adequate.

F. Proper, timely, adequate and sufficient notice of the Bidding Procedures, the Auction, the Sale Motion, the assumption and assignment of contracts, and the hearing on the foregoing has been provided in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, and no other or further notice is required.

G. A reasonable opportunity to object or be heard with respect to the Sale Motion, the Contract Notice and the relief requested therein, and the rights of third parties to submit higher or otherwise better offers for all or any portion of the Purchased Assets in accordance with the Bidding Procedures, has been afforded to all interested persons and entities.

H. The Bidding Procedures afforded a full, fair and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets.

I. The Trustee and the Purchaser have complied with the Bidding Procedures in all material respects or as otherwise approved by this Court. The sale process was non-collusive, fair and reasonable, conducted in good faith and resulted in the Trustee's obtaining the highest available value for the Purchased Assets under the circumstances.

J. The Trustee has reasonably exercised his sound business judgment in determining (1) to enter into the Asset Purchase Agreement and (2) to sell and transfer the Purchased Assets and to assume and assign the Contracts² to the Purchaser. The relief requested in the Sale Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest.

² Nothing herein shall constitute a finding that that a Contract is an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code. To the extent a Contract is not executory within the meaning of the Bankruptcy Code, it shall not be considered a Contract, but shall be treated as an Asset covered by section 1.2(a) or (i) of the Asset Purchase Agreement.

K. The Asset Purchase Agreement was negotiated, proposed and entered into by the Trustee and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. Neither the Trustee nor the Purchaser has engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. The Purchaser is not an "insider" or "affiliate" of the Debtor (as such terms are defined in the Bankruptcy Code). The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby in consummating the transactions contemplated by the Asset Purchase Agreement. The Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in Closing the transactions contemplated by the Asset Purchase Agreement at all times after the entry of this Order.

L. The consideration to be provided by the Purchaser for the Purchased Assets pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) represents the highest and best offer for the Purchased Assets and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession and the District of Columbia.

M. The Purchased Assets constitute property of the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. Upon the entry and effectiveness of this Order, the Trustee shall have full power and authority to execute and deliver the Asset Purchase Agreement and all other documents contemplated thereby; and no further consents or approvals will be required for the Trustee to consummate the transactions contemplated by the Asset Purchase Agreement.

N. With respect to any and all entities asserting any options, pledges, security interests, claims, equities, reservations, third party rights, rights of first refusal, voting trusts or similar arrangements, liens, trusts or deemed trusts (whether contractual, statutory or otherwise), charges, including court-ordered charges, or other encumbrances or restrictions on or conditions to transfer or assignment of any kind (including, without limitation to the generality of the foregoing, restrictions or conditions on or to the transfer, assignment or renewal of licenses, permits, registrations and authorizations or approvals of or with respect to governmental units and instrumentalities), whether direct or indirect, absolute or contingent, matured or unmatured, liquidated or unliquidated, perfected, registered or filed, secured or unsecured, on or against the Debtor or the Purchased Assets (collectively, the "Encumbrances"), either (i) such entity has consented to the sale and transfer, license and assignment, as applicable, free and clear of its Encumbrance, with such Encumbrance to attach to the proceeds of such sale and transfer, license and assignment, as applicable, respectively, (ii) applicable nonbankruptcy law permits the sale of the Purchased Assets free and clear of such Encumbrance, (iii) such Encumbrance is in bona fide dispute or (iv) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance, so that the conditions of section 363(f) of the Bankruptcy Code have been met. Any claims that could have been asserted with respect to the Debtor, the Purchaser or the Purchased Assets are deemed satisfied.

O. Upon the Closing of the Asset Purchase Agreement, the sale and transfer of the Purchased Assets to the Purchaser shall be a legal, valid and effective transfer of the Purchased Assets to the Purchaser, and shall vest in the Purchaser all right, title and interest in the Purchased Assets in accordance with the terms and conditions of the Asset Purchase Agreement free and clear of any Encumbrances including, without limitation, any claims

pursuant to any successor or successor-in-interest liability theory, under sections 105(a), 363(f) and 365 of the Bankruptcy Code.

P. Except as expressly set forth in the Asset Purchase Agreement with respect to Assumed Liabilities arising under assigned Contracts after the Closing, the Purchaser shall not have any liability for any (i) obligation of the Debtor, or (ii) any claim against the Debtor related to the Purchased Assets by reason of the transfer of such Purchased Assets to the Purchaser. The Purchaser shall not be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets or otherwise, to: (1) be a successor to the Debtor (other than with respect to the Assumed Liabilities under the Contracts after the Closing); or (2) have, de facto or otherwise, merged with or into the Debtor. The Purchaser is not acquiring or assuming any liability, warranty or other obligation of the Debtor or Trustee, except as expressly set forth in the Asset Purchase Agreement.

Q. The Purchaser would not have entered into the Asset Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to the Purchaser or its assignees, and the assumption, assignment and sale of the Contracts to the Purchaser or its assignees, were not, except as otherwise provided in the Asset Purchase Agreement with respect to the Assumed Liabilities, free and clear of all Encumbrances of any kind or nature whatsoever, or if the Purchaser would, or in the future could (except and only to the extent expressly provided in the Asset Purchase Agreement with respect to the Assumed Liabilities or the Permitted Encumbrances), be liable for any of such Encumbrances or other liabilities (such other liabilities or obligations being referred to collectively as the "Successor Liabilities"), including, but not limited to, Encumbrances or Successor Liabilities in respect of the following (the following being referred to collectively as the "Successor Liability

Documents, Statutes and Claims"): (1) any employment or labor agreements; (2) all deeds of trust and security interests; (3) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (4) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation and employer contribution laws or any other similar state laws or regulations, (l) state workers' compensation laws or (m) any other state or federal benefits or claims relating to any employees of the Debtor or any predecessors; (5) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims; (6) reclamation, environmental or other claims or liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statute; (7) any bulk sales or similar law; (8) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended;

(9) any theory of antitrust; and (10) any common law doctrine of de facto merger or successor or transferee liability, successor-in-interest liability theory or any other theory of successor liability.

R. The Purchaser does not constitute a successor to the Debtor because:

(1) except as otherwise set forth in the Asset Purchase Agreement, the Purchaser is not expressly or impliedly agreeing to assume any of the Debtor's liabilities other than the liabilities under Contracts accruing after Closing; (2) the transactions contemplated by the Asset Purchase Agreement do not amount to a consolidation, merger or a de facto merger of the Debtor and the Purchaser; (3) the Purchaser is not merely a continuation of the Debtor; and (4) the transactions contemplated by the Asset Purchase Agreement are not being entered into fraudulently or in order to escape liability from the Debtor's debts.

S. The Trustee may assume the Contracts identified on Attachment B to the Contract Notice,³ and assign each of them to the Purchaser, pursuant to section 365 of the Bankruptcy Code free and clear of all Encumbrances. In addition to the Contracts identified on Attachment B to the Contract Notice, the Trustee and Purchaser agree to amend the Asset Purchase Agreement to add the Settlement Agreement and Binding Term Sheet between the Debtor and Tandberg ASA (the "Cisco Settlement Agreement"), the assets or stock of which were subsequently acquired by Cisco Systems or one of its affiliates ("Cisco Systems"), as a "Contract" to be assumed and assigned to the Purchaser. Cisco Systems consents to the Trustee's assumption of the Cisco Settlement Agreement and assignment to the Purchaser under section 365 of the Bankruptcy Code and confirms that there are no monetary or non-monetary defaults by the Debtor that need to be cured under section 365 of the Bankruptcy Code. The assumption and assignment of the Contracts pursuant to the terms of this Order is integral to the

³ Only the Contracts identified on Attachment B to the Contract Notice (unless subsequently removed by Purchaser) are being assumed by the Trustee and assigned to the Purchaser.

Asset Purchase Agreement and is in the best interests of the Trustee and the Debtor's estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Trustee.

T. The respective amounts set forth on Attachment B to the Contract Notice are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all defaults and pay all actual pecuniary losses under the Contracts (the "Cure Amounts").

U. Upon the payment of the applicable undisputed Cure Amount, if any, or the deposit into a reserve of the disputed Cure Amount, if any, (a) each Contract shall constitute a valid and existing interest in property subject to such Contract, (b) none of the Debtor's rights will have been released or waived under any such Contract and all such rights shall vest in the Purchaser free and clear of any and all Encumbrances, (c) the Contracts shall remain in full force and effect, and (d) no default shall exist under the Contracts, nor shall there exist any event or condition which, with the passage of time or the giving of notice, or both, would constitute such a default.

V. The Purchaser has provided adequate assurance of its future performance under the Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

W. All findings of fact and conclusions of law announced by the Court at the hearing, if any, in relation to the Sale Motion are hereby incorporated herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Motion is GRANTED.

2. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled are hereby **OVERRULED** on the merits.

3. All entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Trustee to sell and transfer the Purchased Assets and assign the Contracts to the Purchaser free and clear of any and all Encumbrances in accordance with the terms of the Asset Purchase Agreement and this Order.

4. The Asset Purchase Agreement is hereby approved in all respects, and shall be deemed in full force and effect, binding and benefiting the Trustee, Debtor's estate and the Purchaser.

5. The Trustee is authorized, empowered and directed to implement and consummate all of the transactions contemplated by the Asset Purchase Agreement (each, collectively, a "Sale"), including, without limitation, to sell the Purchased Assets to the Purchaser and to assume and assign to the Purchaser the Contracts, all on the terms and conditions of the Asset Purchase Agreement, for the purchase price set forth in, and determined in accordance with, the Asset Purchase Agreement. The Trustee is authorized, empowered and hereby directed to deliver deeds, bills of sale, assignments and other such documentation that may be necessary or requested by the Purchaser in accordance with the terms of the Asset Purchase Agreement to evidence the transfers required by the Asset Purchase Agreement.

6. Upon the Closing of the Sale, the Purchaser shall take title to and possession of the Purchased Assets free and clear of any and all Encumbrances, including, without limitation, any claims pursuant to any Successor Liability theory or any of the Successor Liability Documents, Statutes and Claims; provided, however, that the Purchaser shall not be relieved of liability with respect to the Assumed Liabilities, including any obligations accruing

under the Contracts from and after the Closing of the Sale. All Encumbrances shall attach solely to the proceeds of the Sale with the same validity and priority as they attached to the Purchased Assets immediately prior to the Closing of the Sale.

7. Effective upon the Closing Date and except with respect to Assumed Liabilities, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the relevant Purchased Assets, with respect to any (a) Encumbrance arising under, out of, in connection with or in any way relating to the Debtor, the Purchased Assets or the operation of such Purchased Assets prior to the Closing of the sale of the Purchased Assets or

(b) Successor Liability, including, without limitation, the following actions:

a. Commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets or properties;

b. Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, its successors, assets or properties;

c. Creating, perfecting or enforcing any lien or other Encumbrance against the Purchaser, its successors, assets or properties;

d. Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its successors;

e. Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or

f. Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

8. Without limiting the generality of the foregoing, except as otherwise specifically set forth in the Asset Purchase Agreement, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations and liabilities of the Debtor arising pursuant to state law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination or other incidents, acts or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation claims filed or to be filed, or reopenings of those claims, by or on behalf of any of the Debtor's current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments or other obligations of any nature whatsoever of the Debtor relating in any way to workers' compensation liability.

9. In addition, without limiting the generality of the foregoing, except as otherwise specifically set forth in the Asset Purchase Agreement, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any debts, obligations and liabilities of the Debtor arising pursuant to the Debtor's or Trustee's ownership or operation of Debtor's business prior to the date of the Closing, including, but not limited to, any Successor Liabilities in respect of the Successor Liability Documents, Statutes and Claims or otherwise.

10. All entities that are in possession of some or all of the Purchased Assets (including, without limitation, source codes, hardware and software Assets) on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser by no later than the Closing.

11. The Purchaser has provided adequate assurance under section 365(b)(1)(A) and (B) of the Bankruptcy Code that it shall promptly cure undisputed Cure Amounts or reserve sufficient cash to pay disputed Cure Amounts. Upon the Closing of the Sale, the Trustee is authorized to assume and assign each Contract (including the Cisco Settlement Agreement) to the Purchaser free and clear of all Encumbrances. Such payments (if any) of Cure Amounts shall (a) effect a cure of all defaults existing thereunder as of the applicable Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption and assignment of the Contracts to the Purchaser, constitute adequate assurance of future performance thereof. The Purchaser shall have assumed the Contracts and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the trustee of such Contracts shall not be a default thereunder. Other than the payment of the relevant Cure Amounts by the Purchaser, neither the Trustee nor the Purchaser shall have any further liabilities to the non-Debtor parties to the relevant Purchased Contracts other than the Purchaser's obligations under the Contracts that accrue after the Closing Date.

12. Any provisions in any Contract that prohibit or condition the assignment of such Contract or allow the party to such Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy

Code for the assumption by the Trustee and assignment to the Purchaser of the Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all rights, title and interest of the Debtor under the applicable Contract.

13. Upon the Closing of the Sale and the payment of or reserve for any Cure Amounts, the Purchaser shall be deemed to be substituted for the Debtor/Trustee as a party to the applicable Contracts and the Trustee shall be relieved from all liability on such Contracts arising after the relevant Closing.

14. If the Closing does not occur, the Contracts shall not be deemed to have been assumed by the Trustee or assigned to the Purchaser. Likewise, if a Contract is removed from the list of Contracts in accordance with the terms of the Asset Purchase Agreement and Contract Notice, such agreement shall not be deemed to have been assumed by the Trustee or assigned to the Purchaser, pursuant to section 365 of the Bankruptcy Code.

15. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

16. Pursuant to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure, this Order shall be effective immediately upon entry and the 14-day stays under such Rules are hereby waived.

17. A copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to act to cancel the liens and other Encumbrances of record with respect to the Purchased Assets.

18. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Asset Purchase Agreement and the provisions of this Order.

19. This Order shall be binding in all respects upon the Trustee, Debtor, its estate, all creditors of, and holders of equity interests in, any Debtor (whether known or unknown), any holders of Encumbrances on the Purchased Assets, all non-Debtor parties to the Contracts, all successors and assigns of the Purchaser and any trustees, if any, subsequently appointed in this case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's case. This Order and the Asset Purchase Agreement shall inure to the benefit of the Purchaser and its respective successors and assigns. The Asset Purchase Agreement and any related agreement shall not be subject to rejection.

20. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any Asset; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

21. Nothing contained in any chapter 11 plan confirmed in these cases or the order confirming any such plan or in any other order in these cases (including any order entered

after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with or derogate from the provisions of the Asset Purchase Agreement, any related agreement or the terms of this Order.

22. This Order constitutes authorization under all applicable jurisdictions' versions of the Uniform Commercial Code for the Purchaser to file UCC termination statements with respect to all security interests in or liens on the applicable Purchased Assets.

23. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

24. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

25. The assets of the Debtor purchased by the Purchaser do not include "Excluded Litigation Claims." "Excluded Litigation Claims" means any and all past, present and future actions causes of action, demands, suits, claims, derivative or direct, (a) against any of the former officers and directors of the Debtor and (b) any avoidance and/or recovery actions that may be brought by the Trustee under chapter 5 of the Bankruptcy Code (other than actions under Section 549 of the Bankruptcy Code for unauthorized Post-Petition transfers of any Collateral); provided that "Excluded Litigation Claims shall not include claims and causes of action for patent, trademark, copyright or other intellectual property infringement, breach on

noncompete and confidentiality limitations by a current or former employee, officer or director of the Debtor, or collection of Accounts.

26. Upon the closing of this sale to the Purchaser, in accordance with Section 3.1 of the Asset Purchase Agreement, neither the Purchaser nor Windspeed Ventures III, LP shall have any claim against the bankruptcy estate for any unpaid Pre-Petition Debt (other than indemnification, reimbursement and contribution obligations of Seller, whether or not matured, liquidated or known at the time of Closing, if any, under the Pre-Petition Loan Documents) or Post-Petition Obligations.

27. This Court shall retain jurisdiction over the transactions contemplated in the Asset Purchase Agreement for purposes of enforcing the provisions of this Order and the Asset Purchase Agreement.

Dated: Boston, Massachusetts
May 19, 2010


UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

[Asset Purchase Agreement]

2032983v2

Title	pdfDocs compareDocs Comparison Results
Date & Time	5/19/2010 10:41:49 AM
Comparison Time	3.52 seconds
compareDocs version	v3.2.2.25

Original Document	[#2032983] [v2] Starbak: Proposed Order on Motion for Sale.doc
Modified Document	[#2032983] [v3] Starbak: Proposed Order on Motion for Sale.doc

Comparison	Count
Insertions	2
Deletions	0
Changes	0
Moves	0
TOTAL CHANGES	2

Name	Markup
Insertions	
Deletions	
Moves	
Inserted cells	
Deleted cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthor
Balloons	False

Options	General	Always
Open Comparison Report after Saving	Word	Formatting
Report Type	Word	False
Character Level	Word	True
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	False
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	False
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	False
Update Automatic Links at Open	Word	End
Summary Report	Word	Separate
Include Change Detail Report	Word	Print
Document View	Word	False
Remove Personal Information	Word	

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into as of April 8, 2010 by and between, on the one hand STARSTREAM, LLC, together with its respective designees, successors and assigns (referred to hereinafter "Buyer"), and, on the other hand, MARK G. DEGIACOMO, AS CHAPTER 11 TRUSTEE OF STARBAK INCORPORATED (the "Trustee" or "Seller"). Certain defined terms used herein have the meanings assigned to them in Section 1.

Background

WHEREAS, an involuntary petition was filed against Starbak Incorporated ("Starbak" or the "Debtor") on January 29, 2010, commencing an involuntary Chapter 11 Case under 11 U.S.C. §§101 et seq. (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court"), Case No. 10-10856 (WCH) (the "Bankruptcy Case");

WHEREAS, the Bankruptcy Court entered an Order for Relief in the Bankruptcy Case on March 16, 2010 (the "Petition Date");

WHEREAS, on March 17, 2010, the Bankruptcy Court ordered the United States Trustee to appoint a Chapter 11 Trustee in accordance with Section 1104 of the Bankruptcy Code;

WHEREAS, the United States Trustee appointed Trustee as the Chapter 11 Trustee to continue operation of the Debtor's business and manage its properties as Chapter 11 Trustee and trustee-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, as of March 31, 2010, Windspeed Ventures III, L.P, the controlling member of Buyer ("Windspeed"), and Trustee entered into that certain Trustee In Possession Loan And Security Agreement (the "LSA") (certain capitalized terms used herein but not defined shall have the definitions given them in the LSA, as provided in Section 1.30;

WHEREAS, in the LSA and the order approving the LSA on an interim basis, among other things, (i) the parties acknowledged and agreed that as of March 12, 2010, Windspeed, as successor in interest to the "Original Lenders" as therein defined, was owed approximately \$1,548,917.28 in principal and interest, plus fees, costs and expenses prior to the Petition Date as Pre-Petition Debt, (ii) Windspeed holds a first priority lien on all of the personal property assets of the Debtor securing such Pre-Petition Debt, and (iii) Windspeed agreed to provide Seller a senior secured, super-priority credit facility, in one or more advances, of up to the sum of \$219,746, constituting Post-Petition Obligations;

WHEREAS, the LSA further provides that Lender named therein shall be permitted to credit bid up to the full amount of the Pre-Petition Debt and the Post-Petition Obligations (including those that have accrued but are not due and payable) at or in connection with any sale of assets of the Debtor or the estate, including, without

limitation, a sale under §363 or §1129 of the Bankruptcy Code, or under any chapter 11 plan;

WHEREAS, Purchaser desires to purchase and Trustee desires to sell and convey to Purchaser substantially all of the assets of the Debtor relating to its business, other than the Excluded Litigation Claims as hereinafter defined, upon the terms and subject to the conditions set forth herein;

Agreement

NOW, THEREFORE, in consideration of the mutual agreements herein and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall be defined as follows:

1.1 "All Asset Bid" has the meaning set forth in Section 8.3(a)(iv).

1.2 "Assets" means the following assets of Debtor:

(a) all tangible personal property, including, without limitation, the equipment listed on the attached Schedule 1.2(a) and all other equipment, machinery, manufactured and purchased parts, goods in process and finished goods, furniture, fixtures, leasehold improvements, tools, wherever located, on order or in transit;

(b) the Contracts and all rights thereunder;

(c) all prepayments and security and other deposits;

(d) all accounts, notes and other receivables of any kind;

(e) all Intellectual Property;

(f) all franchises, approvals, permits, licenses, orders, registrations, certificates, variances and similar rights obtained from governments and governmental agencies related to the assets described in (a) through (f);

(g) all books, records, ledgers, files, documents, correspondence, lists, plats, architectural plans, drawings, specifications, creative materials, manuals, advertising and promotional materials, studies, reports and other materials (in whatever form or medium) related to the assets described in (a) through (g);

(h) all rights and claims under insurance policies of Debtor and all claims, rights of offset and causes of action of the Debtor other than Excluded Litigation Claims;

(i) All of Seller's rights under all contracts, agreements and arrangements to which Seller is a party, including without limitation employment contracts, restrictive covenants, non-disclosure obligations and similar obligations of present and former officers and employees of Seller; and

(j) all goodwill related to the assets described in (a) through (i).

1.3 "Assumed Liabilities" means only those liabilities and obligations of Debtor arising under the terms of the Contracts in the ordinary course of business following the Closing Date, excluding any liabilities and obligations attributable to any breach or default by Seller or Debtor thereunder and excluding any Cure Amounts.

1.4 "Auction" has the meaning set forth in Section 8.3(a)(iii).

1.5 "Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

1.6 "Bankruptcy Court" means the United States Bankruptcy Court for the District of Massachusetts.

1.7 "Bid Protection Motion" has the meaning set forth in Section 8.3(a).

1.8 "Bid Protection Order" has the meaning set forth in Section 8.3(a).

1.9 "Business Day" means any day other than a Saturday, a Sunday or a day on which banks in Boston, Massachusetts are authorized or required to close.

1.10 "Buyer Disclosure Schedule" has the meaning set forth in Section 6.

1.11 "Closing" has the meaning set forth in Section 4.1.

1.12 "Contracts" means the executory contracts and Leases listed on the attached Schedule 1.12, as such Schedule may be amended or supplemented by Buyer in its discretion from time to time prior to the Closing that are to be assumed by Seller and assigned to Buyer hereunder.

1.13 "Credit Bid Amount" means \$700,000 of Post-Petition Obligations and Pre-Petition Debt to be credited against such indebtedness as part of the Purchase Price.

1.14 "Cure Amount" means any amount or performance due or payable under a Contract, in an amount as may be determined by the Bankruptcy Court or agreed to by Buyer, that is required to be paid or performed to cure existing pre-petition or post-petition defaults in order for the Contracts, if any, to be assumed by Seller and assigned

to Buyer under section 365 of the Bankruptcy Code; the "Cure Amount" shall be subject to the limitation set forth in Section 4.2(b)(i) below.

1.15 "Encumbrance" means a mortgage, interest, pledge, lien, claim, attachment, encumbrance, charge or other security interest.

1.16 "Expense Reimbursement" has the meaning set forth in Section 8.3(a)(i).

1.17 "Final Order" means an order of the Bankruptcy Court (or other federal court having appellate jurisdiction) as to which the time to file an appeal, a motion for rehearing or reconsideration, or a petition for writ of certiorari has expired and no such appeal, motion or writ has been filed, or if filed (i) such appeal, motion or petition has been dismissed or denied, or (ii) such order is not subject to a stay pending appeal or otherwise.

1.18 "Intellectual Property" means all of the following assets:

(a) all fictitious business names, trade names, registered and unregistered trademarks, servicemarks, trade dress, slogans, logos, corporate names and internet domain names (including, without limitation, the name "STARBAK"), together with all translations, adaptations, derivations and combinations thereof and all goodwill associated therewith, and any applications or registrations therefor, and renewals in connection therewith;

(b) all inventions and improvements thereto, whether or not patented or patentable, and whether or not reduced to practice;

(c) all patents, patent applications and patent disclosures, together with all reissuances, continuations (in whole or in part), revisions, extensions and reexaminations thereof;

(d) all copyrightable works, copyrights in both published works and unpublished works, and applications, renewals and registrations thereof;

(e) all mask works, and all applications, registrations and renewals in connection therewith;

(f) all trade secrets and confidential business information, including, without limitation, all research and development, know-how, techniques, formulas, processes, methods, concepts, structures, designs, drawings, specifications, technical data, customer/subscriber lists, supplier lists, pricing and cost information, and business and marketing plans and proposals;

(g) all computer software and databases (including source code, executable code, data, databases and related documentation);

(h) all other proprietary rights; and

(i) all copies and intangible embodiments of the foregoing (in whatever form or medium).

1.19 "Leases" means personal property and real property leases, if any, listed on the attached Schedule 1.19, as such Schedule may be amended or supplemented by Buyer in its discretion from time to time prior to the Sale Hearing.

1.20 "LSA" has the meaning set forth in the recitals hereto.

1.21 "Partial Bid" has the meaning set forth in Section 8.3(a)(iv).

1.22 "Purchase Price" means the Credit Bid Amount, plus other consideration set forth in Section 3.1.

1.23 "Sale Approval Order" has the meaning set forth in Section 8.3(b).

1.24 "Sale Hearing" means the Bankruptcy Court hearing to approve the sale of the Assets.

1.25 "Seller Disclosure Schedule" has the meaning set forth in Section 5.

1.26 "WARN" means the Worker Adjustment and Retraining Notification Act.

1.27 LSA Defined Terms. "Excluded Litigation Claims," "Pre-Petition Debt" "Pre-Petition Loan Documents" and "Post-Petition Obligations" have the meaning given those terms in the LSA.

2. Purchase of Assets

2.1 **Assets Purchased.** At the Closing, on the terms and subject to the conditions set forth in this Agreement, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all right, title and interest of Debtor and Seller in and to the Assets, free and clear of any and all Encumbrances.

2.2 **Assumption of Liabilities.** At the Closing, Buyer shall assume and be responsible for the Assumed Liabilities. Except for the Assumed Liabilities, Buyer shall not assume, or be deemed to have assumed, any liability or obligation of Debtor or Seller whatsoever, known or unknown, fixed or contingent.

3. Purchase Price

3.1 **Purchase Price.** At the Closing, in consideration of Seller's sale, conveyance, transfer, assignment and delivery of the Assets to Buyer, Buyer shall credit against Post-Petition Obligations and Pre-Petition Debt the Credit Bid Amount, and as

further consideration and subject to the limitation set forth in Section 4.2(b)(i), Buyer shall pay the Cure Amount for Contracts assumed by Seller and assigned to Buyer, and Buyer will release, discharge and waive the balance of Post-Petition Obligations and Pre-Petition Debt other than indemnification, reimbursement and contribution obligations of Debtor and/or Seller, whether or not matured, liquidated or known at the time of Closing, if any, under the Pre-Petition Loan Documents. In connection with the foregoing sentence, Buyer agrees to waive any interest it has in Excluded Litigation Claims to the extent that such interest constitutes collateral securing the Pre-Petition Debt; however, if Buyer is not the successful bidder for the Assets then to the extent that any Pre-Petition Debt or Post-Petition Obligations remain unsatisfied, Buyer shall retain the right to participate pari passu as an unsecured creditor in the proceeds of any Excluded Litigation Claim that are available for distribution to the unsecured creditors of Debtor. Other than amounts necessary to pay the Cure Amounts, Buyer shall not be obligated to tender any cash to purchase the Assets hereunder.

3.2 Allocation of Purchase Price. Buyer and Seller agree to allocate the Purchase Price (and any capitalizable Assumed Liabilities, costs and expenses) for all purposes (including, without limitation, financial reporting and tax purposes) among the Assets as reasonably determined by Buyer in accordance with the requirements of §1060 of the Internal Revenue Code of 1986, as amended (the "Code"). Buyer and Seller agree to reasonably cooperate in the preparation of Internal Revenue Service Forms 8594 with respect to the transactions contemplated by this Agreement.

3.3 Assignment of Pre-Petition Debt, LSA and Post-Petition Obligations. Windspeed will assign some or all of its rights in the Pre-Petition Debt, the LSA and the Post-Petition Obligations to Buyer prior to the Closing, to the extent necessary to enable Buyer to perform its obligations hereunder, and Seller consents to such assignment.

4. Closing

4.1 Date, Time and Place. Subject to the conditions set forth in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Morse, Barnes-Brown & Pendleton, P.C., 1601 Trapelo Road, Waltham, MA 02451 at 10:00 a.m. on a date that is no later than June 4, 2010 (or on such other date, and at such other place and time, as may be mutually agreeable to Buyer and Seller).

4.2 Deliveries. At the Closing:

(a) Seller shall deliver to Buyer (except to the extent waived by Buyer):

(i) A bill of sale substantially in the form attached hereto as Exhibit 4.2(a)(i) (the "Bill of Sale"), properly executed by Seller and satisfactory to Buyer;

(ii) Short forms of assignment substantially in the form attached hereto as Exhibit 4.2(a)(ii) related to any Leases, Contracts or Intellectual Property, properly executed by Seller and satisfactory to Buyer;

(iii) The books, records and other materials referred to in Section 1.2(g) in Seller's possession;

(iv) Source codes for all of Debtor's owned software;
and

(v) Such other instruments, certificates and other documents as Buyer or its counsel may reasonably request.

(b) Buyer shall deliver to Seller (except to the extent waived by Seller):

(i) Cash in an amount equal to the sum of cure claims asserted by non-debtor parties to Contracts, if any, that will be assigned to Buyer, which cash shall be held by Seller in a separate interest-bearing reserve account, and any excess cash (plus interest) after payment of all allowed or stipulated Cure Amounts shall be promptly returned to Buyer; and

(ii) A certificate signed by Buyer's Secretary or Assistant Secretary, in a form reasonably acceptable to Seller, attesting to resolutions of its Board of Directors authorizing and approving its execution, delivery and performance of its obligations under this Agreement.

(iii) Agreement in form reasonably satisfactory to Seller and Buyer waiving, discharging and releasing the balance of Pre-Petition Debt and Post-Petition Obligations.

5. Representations and Warranties of Seller. Except as set forth on a disclosure schedule attached to this Agreement by Seller which identifies the Sections of this Agreement to which the disclosures therein relate (the "Seller Disclosure Schedule"), Seller represents and warrants to Buyer as follows as of the date hereof and as of the date of the Closing:

5.1 Power and Authority. Subject to entry of the Sale Approval Order, Seller has full power and authority, and has taken all required action necessary to permit it, to execute, deliver and perform its obligations under this Agreement.

5.2 No Required Consents. Except for Bankruptcy Court approval or as set forth on the Seller Disclosure Schedule, to Seller's knowledge, no consent, approval, authorization, declaration or filing is required on the part of Seller in connection with its execution and delivery of, or performance of its obligations under, this Agreement (or, to the extent required, any such consent, approval, authorization, declaration or filing will have been obtained or made, as the case may be, and will be in full force and effect, as of the date of the Closing).

5.3 Noncontravention. Except as set forth on the Seller Disclosure Schedule, Seller's execution and delivery of, and performance of its obligations under, this Agreement will not, to Seller's knowledge, (i) violate any provision of Debtor's charter or bylaws or (ii) violate, constitute a default under (or an event which, with notice or lapse of time or both, would constitute a default under), result in the termination of, accelerate the performance required by, cause the acceleration of the maturity of any debt or obligation pursuant to, or result in the creation or imposition of any Encumbrance on the Assets under, any note, bond, mortgage, indenture, license, agreement, instrument, commitment or other obligation to which it is a party, by which it may be bound, or to which any of its properties may be subject.

5.4 Valid and Binding Obligation. This Agreement constitutes the valid and binding agreements of Seller enforceable against Seller in accordance with its terms, except that (i) such enforcement is subject to entry of the Sale Approval Order, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

5.5 Good Title. Upon entry of the Sale Approval Order, Seller has the right to transfer good and marketable title to the Assets free and clear of any and all Encumbrances.

5.6 No Litigation. There are no actions or suits pending or, to Seller's knowledge, threatened against Seller or Debtor which, if decided adversely to Seller or Debtor, would have a material adverse effect on (i) the Assets or any of Seller's rights in the Assets or (ii) Seller's ability to perform its duties and obligations under, or to consummate the transactions contemplated by, this Agreement.

5.7 Defaults. To Seller's knowledge, there are no non-monetary defaults in effect under any of the Contracts, within the meaning of Section 365 of the Bankruptcy Code, that are required to be cured under section 365 of the Bankruptcy Code.

5.8 No Brokers' or Finders' Fees. No person or entity acting on behalf of Debtor or Seller or any of its affiliates or under the authority of any of them is or will be entitled to any brokers' or finders' fee or any other commission or similar fee, directly or indirectly, from Buyer or any of its affiliates in connection with any of the transactions contemplated hereby.

5.9 Intellectual Property. Except as set forth on the Seller Disclosure Schedule, (a) to Seller's knowledge, no claims are pending or threatened that Debtor or any Assets is infringing on or otherwise violating the rights of any Person with regard to any Intellectual Property and (b) to Seller's knowledge, no Person is infringing on or otherwise violating any right of Debtor with respect to any Intellectual Property. To Seller's knowledge the Seller Disclosure Schedule identifies (a) all patents, patent applications, registered and unregistered trademarks, and licenses, agreements or other permissions of Debtor, (b) each material license, agreement or other permission which

Debtor has granted to any third party with respect to any Intellectual Property and (c) each material item of Intellectual Property that any third party owns and that Debtor licenses or otherwise has rights to use.

5.10 No Other Representations or Warranties. Except for the representations and warranties made by Seller in the foregoing provisions of this Section 5, Seller makes no representations or warranties regarding the Assets and is selling the Assets hereunder on an "AS IS/WHERE IS" basis.

6. Representations and Warranties of Buyer. Except as set forth on a disclosure schedule attached to this Agreement by Buyer which identifies the Sections of this Agreement to which the disclosures therein relate (the "Buyer Disclosure Schedule"), and after giving effect to the assignment contemplated by Section 3.3, Buyer represents and warrants to Seller as follows:

6.1 Organization, Power and Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with all requisite limited liability company power and authority to own its properties and assets and to carry on its business as such business is now conducted.

6.2 Power and Authority. Buyer has full power and authority, and has taken all required action necessary to permit it, to execute, deliver and perform its obligations under this Agreement.

6.3 No Required Consents. No consent, approval, authorization, declaration or filing is required on the part of Buyer in connection with its execution and delivery of, or performance of its obligations under, this Agreement (or, to the extent required, any such consent, approval, authorization, declaration or filing will have been obtained or made, as the case may be, and will be in full force and effect, as of the date of the Closing).

6.4 Noncontravention. Buyer's execution and delivery of, and performance of its obligations under, this Agreement will not violate any provision of its certificate of formation or limited liability company agreement.

6.5 Valid and Binding Obligation. This Agreement constitutes the valid and binding agreement of Buyer enforceable against Buyer in accordance with its terms, except that (i) such enforcement is subject to entry of the Sale Approval Order, and bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

6.6 No Litigation. There are no actions or suits pending or, to Buyer's knowledge, threatened against Buyer which, if decided adversely to Buyer, would have a material adverse effect on Buyer's ability to perform its duties and obligations under, or to consummate the transactions contemplated by, this Agreement.

6.7 No Brokers' or Finders' Fees. No person or entity acting on behalf of Buyer or any of its affiliates or under the authority of any of them is or will be entitled to any brokers' or finders' fee or any other commission or similar fee, directly or indirectly, from Seller or any of its affiliates in connection with any of the transactions contemplated hereby.

7. Closing Conditions

7.1 Conditions to Seller's Obligation. Seller's obligation to sell, convey, transfer, assign and deliver the Assets to Buyer at the Closing is subject to the satisfaction of the following conditions:

(a) The representations and warranties of Buyer set forth in Section 6 shall be true and correct in all material respects as of the date of this Agreement and as of the date of the Closing as though made on and as of the date of the Closing.

(b) Buyer shall have performed in all material respects all agreements and covenants required to be performed by it under this Agreement at or before the Closing, including, without limitation, its agreements and covenants set forth in Section 8.

(c) The Sale Approval Order, as sought pursuant to Section 8.3(b), shall have been entered and be a Final Order, and any and all consents, approvals or clearances required for the consummation of the transactions contemplated by this Agreement shall have been obtained.

(d) No statute, rule or regulation, and no final and nonappealable order, decree or injunction, shall have been enacted, entered, promulgated or enforced by any court or governmental entity of competent jurisdiction which enjoins or prohibits the consummation of the transactions contemplated hereby.

(e) There shall not be pending or overtly threatened any action or proceeding before any court or governmental entity (i) challenging or seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain any material damages from Buyer or Seller as a result of the transactions contemplated by this Agreement or (ii) restricting in any way the receipt, ownership, or ability to dispose of the consideration to be received by Seller in the transactions contemplated by this Agreement.

(f) Buyer shall have made the deliveries to Seller required by Section 4.2(b).

7.2 Conditions to Buyer's Obligation. Buyer's obligation to purchase, acquire and accept the Assets from Seller at the Closing is subject to the satisfaction of the following conditions:

(a) The representations and warranties of Seller set forth in Section 5 shall be true and correct in all material respects as of the date of this Agreement and as of the date of the Closing as though made on and as of the date of the Closing.

(b) Seller shall have performed in all material respects all agreements and covenants required to be performed by it under this Agreement at or before the Closing, including, without limitation, its agreements and covenants set forth in Section 8.

(c) The Sale Approval Order, as sought pursuant to Section 8.3(b), shall have been entered and be a Final Order, and any and all consents, approvals or clearances required for the consummation of the transactions contemplated by this Agreement shall have been obtained.

(d) No statute, rule or regulation, and no final and nonappealable order, decree or injunction, shall have been enacted, entered, promulgated or enforced by any court or governmental entity of competent jurisdiction which enjoins or prohibits the consummation of the transactions contemplated hereby.

(e) There shall not be pending or overtly threatened any action or proceeding before any court or governmental entity (i) challenging or seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain any material damages from Buyer or Seller as a result of the transactions contemplated by this Agreement or (ii) restricting in any way the receipt, ownership, or ability to dispose of the consideration to be received by Seller in the transactions contemplated by this Agreement.

(f) Seller shall have made the deliveries to Buyer required by Section 4.2(a), and transferred title to the Assets, in a manner satisfactory to Buyer.

(g) Between the effective date of this Agreement and the date of the Closing, there shall have been no material adverse change in the Assets.

(h) Seller shall have terminated all of its employees without any responsibility on Buyer's part for payments of severance, costs, retention bonuses or the like.

8. Covenants and Agreements

8.1 Cure. Subject to the limitation set forth in Section 4.2(b)(i), Buyer shall pay when allowed by the Bankruptcy Court or agreed to by Buyer all Cure Amounts under the Contracts to be assumed by Seller and assigned to Buyer.

8.2 Bankruptcy Court Approval

(a) Seller and Buyer acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Contracts are subject to Bankruptcy Court approval. From and after the date hereof and prior to the Closing or

the termination of this Agreement in accordance with Section 9, Seller shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the breach, reversal, voiding, modification or staying of the Sale Approval Order or this Agreement.

(b) Seller will in good faith try to provide Buyer's counsel, at least one business day before filing with the Bankruptcy Court, drafts of any pleadings related in whole or in part, to this Agreement or the transactions contemplated hereunder. Notwithstanding the foregoing, Sellers shall not file any pleadings, motions, notices, statements, schedules, applications, reports and other papers in the Bankruptcy Case that would, or would reasonably be expected to, alter, modify, limit or restrict Buyer's rights or remedies under to this Agreement, without the prior written consent of Buyer (which may be granted or withheld in Buyer's sole discretion).

8.3 Bid Protection; Sale Approval

(a) Not later than April 8, 2010, Seller shall file with the Bankruptcy Court a motion to approve the transactions contemplated herein, subject to higher offers, and seek expedited determination of those portions of the motion relating to entry of an order approving bid procedures and protections (the "Bid Protection Order"), which order shall be in form and substance satisfactory to Buyer and shall provide, without limitation, the following:

(i) In the event that the Bankruptcy Court enters an order approving the sale of any or all of the Assets to a party other than Buyer or enters an order confirming a plan of reorganization of Seller (other than a plan under which Buyer acquires the Assets on the same terms as in this Agreement), at the closing of the sale to a third party or the effective date of such a plan of reorganization, as the case may be, Buyer, notwithstanding Section 8.6, shall be reimbursed for its expenses (including reasonable attorney's fees) incurred in connection with the negotiation and preparation of this Agreement and pursuit of the transactions contemplated hereby up to \$40,000 (the "Expense Reimbursement");

(ii) Payment of the Expense Reimbursement shall have super-priority including under Section 364(c)(1) of the Bankruptcy Code over any and all administrative expenses other than those of Buyer in its capacity as Lender under the LSA, including, without limitation, the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code. No other bidder for any of the Assets shall be entitled to payment of any breakup fee or expense reimbursement;

(iii) Competing offers to acquire the Assets shall be submitted to Seller no later than May 17, 2010, and, if any such offers are timely received by Seller, then an auction of the Assets shall be held no later than May 20, 2010 (the "Auction"), and the Sale Approval Order shall be entered by the Bankruptcy Court no later than May 20, 2010;

(iv) Competing offers for substantially all of the Assets (each, an "All Asset Bid") or a portion of the Assets (a "Partial Bid") shall be on terms and conditions no less favorable than those set forth in this Agreement and shall provide for cash consideration in an amount that exceeds the Purchase Price (individually, if the bid is an All Asset Bid, or in the aggregate, if there are two or more Partial Bids, as the case may be) by at least \$50,000;

(v) At the Auction, in comparing any bid of Buyer to any All Asset Bid or to the aggregation of Partial Bids, as the case may be, the amount of the Expense Reimbursement shall be considered by Seller; and

(vi) At the Auction, Buyer shall have the option to increase its Credit Bid Amount, or supplement the Purchase Price with an additional amount of cash, at any time.

(b) At the Sale Hearing, Seller shall seek the entry of an order of the Bankruptcy Court in form and substance satisfactory to Buyer (the "Sale Approval Order") containing, without limitation, provisions:

(i) approving the terms and conditions of the sale of the Assets to Buyer as set forth in this Agreement;

(ii) holding that the sale of the Assets to Buyer shall be free and clear of any and all Encumbrances whatsoever;

(iii) finding that Seller holds good and marketable title to the Assets;

(iv) finding that the Contracts have not been terminated and remain in full force and effect, and that there are no defaults, within the meaning of Section 365 of the Bankruptcy Code under the Contracts other than those that will be cured by payment of the Cure Amount, and that the counter-party to any Contract shall not be excused from full and timely performance thereunder on account of the assumption or assignment or any defaults pre-dating the assumption and assignment;

(v) finding that the Purchase Price constitutes fair value for the Assets;

(vi) holding that Buyer shall have no responsibility whatsoever under WARN;

(vii) holding that Buyer shall have no successor liability with respect to claims arising or accruing prior to or on the date of the Closing (subject to the terms of the LSA), and shall not be deemed a successor of Seller or Debtor;

(viii) finding that notice of the transactions contemplated hereby was good and sufficient;

(ix) authorizing and directing Seller to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(x) finding that the transactions contemplated by this Agreement were negotiated at arm's length, that Buyer acted in good faith in all respects, and that Buyer and its designees, successors and assigns are entitled to the protections of Section 363(m) of the Bankruptcy Code;

(xi) finding that the Auction, if any, and sale process conducted by Seller and/or its agents was non-collusive, fair and reasonable and was conducted in good faith;

(xii) finding that Buyer and Seller did not engage in any conduct which would allow the transactions contemplated by this Agreement to be set aside pursuant to Section 363(n) of the Bankruptcy Code;

(xiii) holding that Buyer shall have no liability for any amounts due or payable under any of the Leases or Contracts which arose, accrued or are attributable to the periods prior to the date of the Closing, whether or not due or payable after the date of the Closing, except for Cure Amounts;

(xiv) holding that, pursuant to Section 105 of the Bankruptcy Code, any creditors of Debtor are prohibited from taking any actions against Buyer or the Assets except in respect of the Assumed Liabilities;

(xv) finding that the fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) shall not apply.

8.4 **Conduct of Business.** Until the Closing or the termination of this Agreement, Debtor shall and Seller shall cause Debtor to (i) operate its business substantially in the ordinary course and consistent with the LSA, (ii) use commercially reasonable efforts to maintain the Assets in their current condition, ordinary wear and tear excepted, (iii) not sell or otherwise dispose of any portion of the Assets except in the ordinary course of business or pursuant to this Agreement, (iv) maintain in full force and effect all insurance policies relating to Debtor's business and Assets (or insurance policies providing comparable coverage), (v) not amend in any material respect, or terminate, any Contract prior to the expiration of the term thereof except in the ordinary course of business, and (vi) maintain its books, accounts and records in the usual, regular and ordinary manner, on a basis consistent with prior years.

8.5 **Access of Buyer.** Until the Closing or the termination of this Agreement, Seller, upon reasonable prior notice from Buyer, shall (i) afford to Buyer and its representatives, at all reasonable times during normal business hours, full and complete access to Debtor's employees, properties, contracts, books and records, and other documents and data, and (ii) furnish Buyer and its representatives with such additional financial, operating, and other data and information as Buyer may reasonably request.

8.6 Expenses. Except as set forth in Sections 8.3(a) and 9.4, Buyer and Seller shall bear their respective expenses incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated hereby, including without limitation, all fees and expenses of agents, representatives, counsel and accountants.

8.7 Further Assurances. Each of the parties shall execute such documents, further instruments of transfer and assignment and other papers and take such further actions as the other party may reasonably request to carry out the provisions hereof and the transactions contemplated hereby.

9. Termination

9.1 Mutual Agreement. This Agreement may be terminated at any time prior to the Closing by the written consent of Buyer and Seller.

9.2 Termination by Seller. This Agreement may be terminated by Seller (provided that it is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement) alone, by means of written notice to Buyer, if (i) there has been a material breach by Buyer of any representation, warranty, covenant or agreement of Buyer set forth in this Agreement, (ii) Seller has delivered written notice of such breach to Buyer, and (iii) such breach has not been cured within thirty (30) days after written notice to Buyer of such breach.

9.3 Termination by Buyer. This Agreement may be terminated by Buyer (provided that it is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement) alone, by means of written notice to Seller, if (i) (a) there has been a material breach by Seller of any representation, warranty, covenant or agreement of Seller set forth in this Agreement, (b) Buyer has delivered written notice of such breach to Seller and (c) such breach has not been cured within thirty (30) days after written notice to Seller of such breach, (ii) the Sale Approval Order has not been entered in form and substance satisfactory to Buyer by May 20, 2010 or if the Closing does not occur by June 4, 2010, or (iii) the Bankruptcy Court authorizes the sale of some or all of the Assets to a party other than Buyer.

9.4 Effect of Termination. In the event of a termination of this Agreement as provided in this Section 9, this Agreement shall forthwith become void and have no effect, and there shall be no liability or obligation on the part of Buyer, Seller or their respective affiliates; provided, however, that such termination shall not affect any liabilities of the parties (i) that have arisen before the effective time of such termination or (ii) pursuant to the provisions of Sections 8.3 (it being agreed and understood that the rights of Buyer to be paid the Expense Reimbursement shall survive any such termination) or 8.6. In the event that Buyer is entitled to the Expense Reimbursement, it shall be paid at the Closing of a sale to the successful bidder(s).

10. Miscellaneous

10.1 Notices. All notices and other communications shall be deemed to have been duly delivered, unless earlier received, (i) if sent by certified or registered mail, return receipt requested, or by first-class mail, five (5) calendar days after being deposited in the United States mails, postage prepaid, (ii) if sent by United States Express Mail or other express mail service, two (2) calendar days (other than Sundays and federal holidays) after being deposited therein, (iii) if sent by telegram, telecopy or other electronic transmission (including electronic mail), on the date sent, and (iv) if delivered by hand, on the date of receipt, addressed as follows:

If to Seller:

Mark G. DeGiacomo, Esq.
Murtha Cullina LLP
99 High Street
20th Floor
Boston, MA 02110
Tel.: (617) 457-4039
Fax No.: (617) 482-3868
Email: mdegiacomo@murthalaw.com

with a copy to:

Thomas Vangel
Murtha Cullina LLP
99 High Street
20th Floor
Boston, MA 02110
Tel.: (617) 457-4039
Fax No.: (617) 482-3868
Email: tvangel@murthalaw.com

If to Buyer:

Starstream, L.L.C.
c/o Windspeed Ventures III, L.P.
52 Waltham Street
Lexington, MA 02421
Attn: Daniel Lathon, Jr.
Tel.: (781) 860-8888 x 11
Fax: (781) 953-3777
Email: dan@wsventures.com

with a copy to:

Morse, Barnes-Brown & Pendleton, P.C.
Reservoir Place
1601 Trapelo Road
Waltham, Massachusetts 02451
Fax: 781-622-5933
Email: caw@mbbp.com
Attention: Charles A. Wry, Jr., Esq.

-and-

Douglas B. Rosner, Esq.
Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, MA 02110
Tel.: (617) 482-1776
Fax: (617) 574-4112
Email: drosner@goulstonstorrs.com

A party may change its addresses for receiving notices and other communications by notifying the other party of such change in accordance with this Section 10.1.

10.2 **Survival and Materiality of Representations.** Each of the representations and warranties made by the parties hereto shall be deemed material and shall survive the Closing and the consummation of the transactions contemplated hereby (even if the damaged party knew or had reason to know of any misrepresentation or breach of warranty at the time of the closing) until the expiration of the applicable statute of limitations; provided, however, that the representations and warranties set forth in Sections 5.7, 5.9, 6.6 and 6.7 shall expire on the date that is two (2) years after the Closing.

10.3 **Entire Agreement.** This Agreement, including the other agreements and documents referred to herein (which are hereby incorporated by reference herein), supersedes any and all oral or written agreements or understandings heretofore made relating to the subject matter hereof and constitutes the entire agreement of the parties relating to the subject matter hereof.

10.4 **Parties in Interest.** All covenants and agreements, representations and warranties contained in this Agreement made by or on behalf of any of the parties hereto shall bind and inure to the benefit of the parties hereto, and their respective successors, assigns, heirs, executors, administrators and personal representatives, whether so expressed or not.

10.5 **Amendments, Waiver By Written Instrument.** This Agreement may be amended, modified or supplemented, and any obligations hereunder may be waived, only by a written instrument executed by the party against whom enforcement is sought. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate as a waiver of any subsequent breach. No failure on the part of either

party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy by such party preclude any other or further exercise thereof or the exercise of any right or remedy. All rights and remedies hereunder are cumulative and are not exclusive of any rights and remedies provided by law.

10.6 No Implied Rights or Remedies. Except as otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm or corporation, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

10.7 Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof.

10.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

10.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.10 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, except an assignment by Buyer to its affiliate.

10.11 Governing Law; Jurisdictional Matters. **THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN BOSTON, MASSACHUSETTS. SELLER AND BUYER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO 1) A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION. SELLER AND BUYER**

REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.11 Taxes. Seller shall be liable for any and all sales, capital gains, bulk transfer and similar taxes payable as a result of the transactions contemplated hereby.

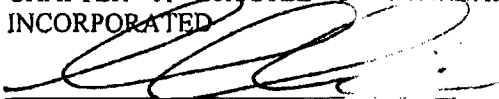
IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as an agreement under seal as of the date first above written.

Seller:

Buyer:

MARK G. DEGIACOMO, ESQ., AS
CHAPTER 11 TRUSTEE OF STARBAK
INCORPORATED

STARSTREAM, LLC



By: _____

By: Mark G. DeGiacomo,
Title: Chapter 11 Trustee, not Personally

Name:
Title:

With respect to Section 3.3 only:

WINDSPEED VENTURES III, L.P

By: _____

Name:
Title:

REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.11 Taxes. Seller shall be liable for any and all sales, capital gains, bulk transfer and similar taxes payable as a result of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as an agreement under seal as of the date first above written.


Seller:

Buyer:

MARK G. DEGIACOMO, ESQ., AS
CHAPTER 11 TRUSTEE OF STARBAK
INCORPORATED

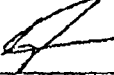
STARSTREAM, LLC

By: Mark G. DeGiacomo,
Title: Chapter 11 Trustee, not Person

By: 
Name: Daniel H. Balthus, Jr.
Title: Manager

With respect to Section 3.3 only:

WINDSPEED VENTURES III, L.P

By: 
Name: Daniel H. Balthus, Jr.
Title: General Partner