


# Business Assets Purchase Agreement

- 🔊 Here is a sample contract enabling you to purchase / sell just the assets of a business – the product(s), goodwill, trademarks, intellectual property(ies), web site(s), URL(s), etc.
- 🔊 See also, “Partnership Assets & LLC Buyout” Agreement
- 🔊 Often it is much easier to sell/purchase the assets of a business than the entire business. Assets can exclude any/all of the business’ / owner’s liabilities and other possible “skeletons in the closet”

Date: **[Date]**

To: **[Name of Seller]**

From:  **[Owner/Founder]**  
**[Company]**

Subject: **Asset Purchase Agreement**

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Attached is a Business Assets Purchase Agreement embodying our deal to acquire your business assets.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

# From JIAN

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🚫 **Do Not Use This Agreement 'As-Is.'**
- 🚫 **This Agreement Is Not Legal Advice.**
- 🚫 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🚫 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🚫 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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- Please visit our website under [Updates](#).
- Remember to bookmark our website: [www.JIAN.com](http://www.JIAN.com)

## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

# Asset Purchase Agreement

- 🔊 This introductory paragraph lists the date and the parties to this Agreement. We formatted this agreement uniquely to make it easy on others (judge, arbitrator(s), etc. God forbid) to readily understand who is involved, when the agreement begins and some basic summary background information.

Effective Date **[Date]**

between **[Company Legal Name]**, (“[Company]”)  
a **[State]** **[Corporation/Partnership/Sole Proprietorship/Resident]**,  
located at **[Address]**  
 **[City]**, **[State]** **[Zip Code]**

and **[Seller Name]**, (“Seller”)  
a **[State]** **[Corporation/Partnership/Sole Proprietorship/Resident]**  
located at **[Address]**.

## Summary

- Seller was from [Date], until [Date], engaged in the business of [manufacturing plastic things / organizing and conducting seminars] (the “Business”).
- [Company] desires to purchase 100% of the assets owned by Seller in the operation of the Business, subject to the conditions and upon the terms and conditions set forth herein.
- Seller and [Company] entered into a License Agreement on [Date] (the “License”) under which [Company] licensed all of the intellectual property of Seller. From [Date] forward, Seller ceased providing seminar services and [Company] began providing such services under the License. [Company] and Seller desire to apply the payments made under the License toward the purchase price.
- As of [Date], an expert outside appraisal firm, [Appraisal Firm Name], completed an Asset Valuation of the assets of the Seller. Premium Capital was hired by [Company] in [Date] to perform the Valuation, which cost \$10,000. In performing the Valuation, [Appraisal Firm Name] made multiple visits to Seller’s offices, performed a physical review of asset inventory, and multiple examiner reviews of the books and records of Seller over a twenty month period. The Parties and their respective managers and directors are relying upon this Asset Valuation in establishing the Purchase Price.

## 1. Agreement

**THEREFORE**, in consideration of the mutual agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

**Agreement of Purchase and Sale.** [Company] hereby agrees to purchase from Seller and Seller hereby agrees to sell to [Company], for the consideration and upon the terms and conditions set

forth herein, all of Seller's right, title and interest in and to all assets of Seller constituting or used in connection with the Business (the "Assets"), including without limitation the following:

☞ Exhibit C should include a thorough listing of any and all of the product, inventory, and supplies being transferred.

1.1.2 [Product, Inventory and supplies] listed in Exhibit C.

☞ Exhibit D should include a thorough listing of any accounts receivable that are being transferred.

1.1.3 [Trade Accounts Receivable] listed in Exhibit D (except those described in Section 1.2).

☞ Exhibit E should include a thorough listing of all of the machinery and equipment being transferred.

1.1.4 [Office furniture, office equipment, manufacturing equipment, computer equipment and other machinery and equipment] listed in Exhibit E.

1.1.5 [All of the right, title and interest in and to all fixtures and leasehold improvements of the Seller.]

1.1.6 [Prepaid expenses, deferred charges, claims for refunds, and deposits.]

1.1.7 [Telephone numbers, service marks, the trade name [trade name / trademark / service mark], and all other trade names and trademarks (including the goodwill represented by that), trade secrets, Business records and files, lists of current and potential Customers and Vendors, promotional materials, copyrighted materials and all other intangible items, including the goodwill of Business as a going concern.]

1.1.8 [All rights under the contracts, leases, licenses, insurance policies, fidelity and contract bonds, and other Agreements relating to the Business, as listed in Exhibit F.]

1.1.9 [All documents, files, Agreements, instruments, records, notices, Membership Certificates, affidavits, statements, and all other papers and information of any kind relating to the Business or the Assets, including but not limited to such items stored in computer memories, on microfiche, electronically or by any other means, used, made or compiled by or on behalf of the Seller or made available to the Seller (all of which shall be delivered by the Seller to the main premises of the Business (if not already present there) on or before the Effective Date.

☞ Section 1.1.10 is quite broad in that it covers all of the assets of the business, whether or not they have been identified above and whether or not they are on the balance sheets of the business.

☞ The Seller may want to omit this section so that the Buyer cannot later claim that there were certain assets of the business that he never received despite the fact that they were not specifically included in this Agreement. By deleting this section, the burden is on the Buyer to list all of the assets that are being transferred to him. By leaving this section intact, the burden is on the Seller to list any of the assets not being transferred in the following section of the Agreement.

1.1.10 [All other property and assets of every kind and description whether personal, real, mixed, tangible or intangible, wherever located and whether or not reflected on its balance sheet.

## 1.2 Assets Excluded

☞ The following Sections, 1.2 through 1.2.8, should be given great care. The previous section gave a fairly expansive definition of assets, this next section gives an opportunity to exclude specific assets.

- ☞ In the event that the Seller does not wish to exclude one or more of the assets listed below, merely delete that section from the Agreement. If an item is deleted, however, the Buyer may wish to specifically include the asset in Section 1.1 as an asset being transferred.

**[Assumed Obligations.** Except as specifically set forth in Schedule B, [Company] will not assume any of Seller's debts and obligations, including without limitation trade payables and legal fees, all of which shall remain the sole responsibility of Seller.]

1.2.1 The following assets are not being sold by the Seller or purchased by the Buyer and are specifically excluded from the meaning of the term "Assets":

- ☞ Leased items may be excluded. Note, however, that if they are not excluded, the leasing company will need to be notified and approve of the transfer.
- ☞ Section 1.2.2 lists the leased items, if any, that the Seller does not want transferred to the Buyer (or the Buyer does not want transferred to him).

1.2.2 [One copy machine / alarm system / other and one Chevrolet / Dodge van / automobile that are being leased by the Seller].

- ☞ Certain receivable may be retained by the Seller. Section 1.2.3 lists the receivable, if any, that the Seller does not want transferred to the Buyer.

1.2.3 (Receivable due the [ ] from [Enter Name] and [Enter Name] on the Closing Date).

- ☞ Section 1.2.4 states that the Seller's unemployment compensation reserve account is generally not transferred; you should check with the State Unemployment Office as this may vary from state to state.

1.2.4 The Seller's unemployment compensation reserve account under the [State] Unemployment Insurance Code.

- ☞ In Section 1.2.5, the Seller may retain any cash on hand as of the closing date.

1.2.5 Cash and cash equivalent items, including Lender accounts, money market accounts, certificates of deposit and Lender deposits, on hand at the close of business on the Closing Date.

- ☞ In Section 1.2.6, the Seller will generally want to retain the accounts receivable amounts due for a certain period prior to the closing date. The following section provides for this as well as any Moines owed from litigation commenced prior to the closing date so long as these receivable are not specifically identified in Exhibit E, trade-out transactions.
- ☞ In general, 60 days is appropriate for retaining accounts receivable, though the Seller may want to use a different number of days depending on the usual course of business.

1.2.6 Accounts receivable earned from operations of the Business during the period beginning on the date [Month, Day, Year] [30 / 60 / 90] days prior to the Closing Date and ending on the Closing Date, and accounts receivable as to litigation commenced prior to the Closing Date against a debtor for purposes of collection, provided that they do not include accounts receivable arising from the trade-out transactions listed in Exhibit E.

- ☞ In Section 1.2.7, the Seller would retain any court judgments in its favor regarding the collection of any accounts receivable.

1.2.7 All judgments in favor of the Seller in connection with the collection of accounts receivable.

1.2.8 Accounts receivable to the extent arising from any trade-out transactions other than those listed on Exhibit E; and

- ☞ Section 1.2.9 merely relates to the books of the company prior to the sale.

1.2.9 All checkbooks, stubs, books of account, ledgers, and journals relating to the prior operation of the Business.

### 1.3 Liabilities

- ☞ Section 1.3 lists all of the liabilities that are being assumed by the Seller as of the closing date. The Seller is agreeing to assume only those liabilities that accrue and arise after the closing date. If the Seller will not be assuming one or more of these liabilities, that liability should be deleted from the list that follows.
- ☞ Liabilities assumed include: paid and unpaid orders for products (such products should be itemized in Exhibit A), accrued vacation rights of the Seller's employees as itemized in Exhibit F, and obligations pursuant to the Agreements listed in Exhibit D.

1.3.1 Subject to the terms and conditions of this Agreement, the Buyer will, as of the Closing Date, assume from the Seller and agrees to discharge only those liabilities and obligations that both accrue and arise after the Closing Date with respect to:

- (1) the paid sales orders / Agreements for Products as listed on Exhibit A to be delivered by the Seller to the Buyer at the Closing, and
- (2) the sales Agreements for sales of the Products as listed on Exhibit A to be delivered by the Seller to the Buyer at the Closing, and all commission obligations to the sales personnel of the Seller arising from the sales Agreements to the extent attributable to Products sold after the Closing, and
- (3) accrued vacation rights as listed in Exhibit F to be delivered at Closing, and
- (4) the Agreements listed on Exhibit D, a true and correct copy of each Agreement has been provided to the Buyer by the Seller (for the purposes of this Agreement). An obligation under such Agreements is considered to have arisen and accrued after the Closing Date if performance or sale closed on [Month, Day, Year].

## 2. Purchase Price & Terms of Payment

The total purchase price to be paid by [Company] to Seller for the Assets (the "Purchase Price") will be the sum of \$[000,000] payable as follows.

- 1) The license royalty payments made by [Company] between [Date] and the date of this contract, in a total amount of \$[000,000.00] will be applied toward the Purchase Price (schedule A);
- 2) The payments made by [Company] of Seller's outstanding payables between [Date] and [Date], in a total amount of \$[000,000] will be applied toward the Purchase Price (schedule A);
- 3) [Company] will assume and pay Seller's payables and expense set forth in Schedule B, which total \$[000,000]; and
- 4) [Company] will pay the remaining balance of \$[000,000] no later than [Date].

**Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall occur at the [location / Westin LAX] on [Date].

[Company] has been provided unrestricted access to, and conducted a due diligence review of, Seller's books and records, including without limitation, corporate minute books and stock ledgers; bank records; accounting books and records (including without limitation periodic financial statements, accounts payable ledgers, and accounts receivable ledgers); insurance files (including liability, property, group health and workers' compensation insurance policies and claims records); operating policies and procedures; employee manuals; federal and state income tax returns for the most recent three years; and sales tax returns and payment records, and has approved same, in [Company]'s sole discretion.

### **3. Covenant Not to Compete**

Seller agrees that Seller shall not, during the period of three (3) years following the Closing, without the prior written consent of [Company], which consent may be withheld for any reason or no reason, directly or indirectly engage in, or own or control an interest in, or act as an officer, director, or employee of, or consultant or adviser to, any business consisting, wholly or in part, of the provision of seminars.

It is understood and agreed that, in the event of a breach of the covenants contained in this Agreement, [Company] will not have an adequate remedy in the form of money damages in that that the loss to [Company] will not likely be an isolated case and it will be difficult or impossible to ascertain the exact amount of loss. In such event, therefore, [Company] shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction, without bond, restraining the breaching party from engaging in the activity prohibited under this Agreement. Such remedy shall be nonexclusive and without prejudice to any and all other remedies to which [Company] may be entitled. Further, in the event of a violation of any of the covenants in this Agreement, the period for which the provision would remain in effect shall be extended for a period of time equal to that period when the activities constituting the violation commenced and ending when the activities constituting the violation shall have been finally terminated in good faith.



Selling Parties expressly acknowledge and agree that the restrictive provisions of this Agreement are reasonable and necessary for the protection of [Company]'s legitimate business interests, that such restrictions impose no undue burden upon Selling Parties, and that the enforcement of such restrictions will not cause any Selling Party to be deprived of the ability to earn a livelihood.

[Company], in addition to all equitable relief and damages, shall be entitled to recover all costs, expenses and fees, including attorneys' fees, incurred by [Company] in connection with the breach, by a Seller, of any covenant or agreement under this Agreement or the enforcement of any such covenant or agreement, whether or not suit is instituted.

### **4. Indemnification of Sellers**

[Company] jointly and severally agrees to indemnify and hold Seller harmless from and against any and all loss, liability, settlement, damage, deficiency, cost and expense arising by virtue of:

Any breach of this Agreement or misrepresentation hereunder by [Company];

Any and all actions, suits, proceedings, demands, judgments, costs and other expenses, including reasonable attorney's fees, incident to any of the matters referred to in this Section or any claims with respect thereto.

### **5. Indemnification of [Company]**

Seller agrees to indemnify and hold [Company] harmless from and against any and all loss, liability, damage, deficiency, costs and expenses arising by virtue of:

Any breach of this Agreement or misrepresentation hereunder by Seller; and

Except as to those obligations expressly assumed herein, any debt or obligation of Seller, including, without limitation, any debt or obligation arising out of or in connection with the operation of the Business by Seller prior to the Closing Date, and any act or omission on the part of Seller, its respective officers, employees, and agents, in connection therewith.

Any and all actions, suits, proceedings, demands, judgments, costs and expenses, including reasonable attorney's fees, arising out of the operation of the Business prior to the Closing, or any claims with respect thereto.



## 6. General Provisions

🔊 The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by explaining issues such as notice, assignment, legal remedies, waiver, and attorney fees.

**6.1 Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

🔊 You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

**6.2 Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

🔊 This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to is included in this Agreement. Otherwise, it is as if it was not agreed to.

**6.3 Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, that are not expressly stated in this Agreement, shall be binding on such parties.

🔊 Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

**6.4 All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

🔊 All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

**6.5 Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.



🔊 In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

**6.6 Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

🔊 Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

**6.7 Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

🔊 Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

**6.8 Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. [Company] and [Client] intend that this Agreement to arbitrate be irrevocable.

🔊 Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

**6.8 Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

🔊 Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

**6.9 Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

🔊 This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

🔊 You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred

to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.

- ☞ Generally, neither party may assign their respective rights to a third party, however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3<sup>rd</sup> party.
- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...
- ☞ CHOOSE one or the other of these two following paragraphs.

**6.10 Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

- ☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

**6.10 Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

- ☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

**6.11 Certain Sections Invalid.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

- ☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

**6.13 Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

- ☞ Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

**6.14 Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

## **Understood, Agreed & Approved**

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]:

Seller:

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[Owner/Founder], Founder/CEO/President

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[Seller], [Title]



# Exhibit A

## Royalty Payments Already Made

▪ [Xxx]		\$(000)
▪ [Xxx]		\$(000)
▪ [Xxx]		\$(000)
▪ Total		\$(000)

## Expense Payments Already Made

▪ [Xxx]		\$(000)
▪ [Xxx]		\$(000)
▪ [Xxx]		\$(000)
▪ Total		\$(000)

# Exhibit B

## Assumed Obligations & Payables

▪ [Xxx]		\$(000)
▪ [Xxx]		\$(000)
▪ [Xxx]		\$(000)
▪ Total		\$(000)

# Exhibit C

## Product, Inventory, Supplies & Equity

- [Xxx]
- [Xxx]
- [Xxx]

# **Exhibit D**

## **Accounts Receivable**

- Xxx
- Xxx
- xxx



# **Exhibit E**

## **Certain Assets of the Business**

Description:

- Office furniture, office and manufacturers equipment
- computer equipment
- other machines and equipment
- Serial number / Fixed Asset Account number

# **Exhibit F**

## **Current Agreements**

- Sales Orders
- Agreements
- Contracts, Leases, Licenses
- Insurance Policies, Fidelity and Contract Bonds, and
- Other Agreements

# Exhibit G

## Promissory Note

