**AGREEMENT FOR MERCHANDISING SERVICES**

*[NAME OF MARKETER]*

*[ADDRESS OF MARKETER]*

*[TELEPHONE NUMBER OF MARKETER]*

*[FAX NUMBER OF MARKETER]*

*[DATE OF AGREEMENT]*

*[NAME OF RETAILER]*

*[ADDRESS OF RETAILER]*

Re: Amended and Restated Merchandising and Supply Agreement

Dear *[NAME]*,

The following is the amended and restated merchandising and supply agreement (the “Agreement”) between *[NAME OF RETAILER]* (“*[NAME OF RETAILER]*”) and *[NAME OF MARKETER]* (“*[NAME OF MARKETER]*”). Effective on the date above, this document amends, restates, and supersedes the merchandising and supply agreement between the parties dated *[DATE OF SUPPLY AGREEMENT]*.

1. Products: *[NAME OF MARKETER]* will merchandise and supply Products (defined below) to *[NAME OF RETAILER]*, on the terms and conditions of this Agreement. The term “Products” in this Agreement refers to [*“refurbished,” “open box,” and “end of life” computer hardware, electronics, and exceptional value household products; “clone” or “white box” computer hardware products]*; and similar merchandise. *[NAME OF RETAILER]* acknowledges its understanding that *[NAME OF MARKETER]* is in the liquidation business with respect to the Products. *[NAME OF MARKETER]* is not the manufacturer of the Products. WITH THE EXCEPTION OF POSSIBLE WARRANTIES FROM MANUFACTURERS OF THE PRODUCTS (WHICH MAY OR MAY NOT BE AVAILABLE), *[NAME OF MARKETER]* IS FURNISHING THE PRODUCTS TO *[NAME OF RETAILER]* AND ITS CUSTOMERS “AS IS,” WITHOUT ANY WARRANTY BY *[NAME OF MARKETER]* WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY. *[NAME OF MARKETER]* will provide all manufacturer's warranty information to the extent available.

2. Marketing of Products: At any one time, *[NAME OF MARKETER]* will offer *[NAME OF RETAILER]* a limited amount of stock keeping units (“SKUs”) of Products selected by *[NAME OF MARKETER]* based on consultations with *[NAME OF RETAILER]*. The Products will be described on pre-built HTML pages developed by *[NAME OFNAME OF RETAILER]* on the *[NAME OF RETAILER]* Web site presently expected to be named *[name of website]* (the “Site”). The Site may have another name selected by *[NAME OF RETAILER]*. Those HTML pages are to include technical specifications and pictures of the Products (each to be provided by *[NAME OF MARKETER]*), together with pricing and other information *[NAME OF RETAILER]* determines to be in its best interest.

3. Merchandising Procedures: *[NAME OF MARKETER]* will notify *[NAME OF RETAILER]* electronically or on paper as each SKU becomes available from *[NAME OF MARKETER]*'s liquidation sources (the “Availability Notice”). The Availability Notice will include number of units, technical specifications, price to *[NAME OF RETAILER]*, and suggested sales price by *[NAME OF RETAILER]*. *[NAME OF MARKETER]* makes no representation or warranty as to suggested sales prices by *[NAME OF RETAILER]*, such sales prices being totally within the discretion of *[NAME OF RETAILER]* based upon all of its market information, including information furnished by *[NAME OF MARKETER]* as part of the Availability Notice. Within *[specification of period]* of receipt of the Availability Notice, *[NAME OF RETAILER]* will notify *[NAME OF MARKETER]*, electronically or in writing (the “Acceptance Notice”), of those SKUs, if any, it intends to place on the Site. With the Acceptance Notice, *[NAME OF RETAILER]* will be deemed to have accepted the price to *[NAME OF RETAILER]* set out in the Availability Notice, and those SKUs will be subject to the terms and conditions of this Agreement. THE ACCEPTANCE NOTICE WILL NOT CREATE ANY OBLIGATION OF *[NAME OF RETAILER]* OR *[NAME OF MARKETER]* TO PURCHASE OR SUPPLY ANY QUANTITY OF ANY SKU.

4. Fulfillment Services: *[NAME OF MARKETER]* will be responsible, directly or through \_\_\_\_\_(“*[NAME OF COMPANY 1]*”) or one or more other contractors, for fulfilling on behalf of *[NAME OF RETAILER]* orders for the Products from *[NAME OF RETAILER]* Internet consumer customers who visit the Site. These services are comprised of packing and shipping those orders direct to the Internet consumer in accordance with Exhibit A to this Agreement (collectively the “Fulfillment Services”).

5. No Exclusivity: *[NAME OF MARKETER]* may offer and sell any SKU, and may directly or indirectly provide related or unrelated Fulfillment Services or other services, or both, to another party without obligation or liability to *[NAME OF RETAILER]*.

6. SKU Removal from Site: *[NAME OF MARKETER]* shall have the right in its sole discretion to request, electronically or on paper, upon no less than 24 hours prior written notice, that *[NAME OF RETAILER]* remove a particular SKU from the Site (or, if the particular SKU is not on the Site, that *[NAME OF RETAILER]* not place the SKU on the Site). Upon receipt of that request, *[NAME OF RETAILER]* shall be required to remove the SKU from the Site on or before the time specified in the request (or, if the SKU is not on the Site, *[NAME OF RETAILER]* shall not place it on the Site). Circumstances in which *[NAME OF MARKETER]* would make such a request would include failure to place the SKU on the Site promptly following selection by *[NAME OF RETAILER]*, significant sales slowdowns or shortfalls of the SKU from the Site, or anticipated price reductions for the SKU in the liquidation or other market.

7. Returns: Due to the liquidation/close-out nature of the Products, *[NAME OF RETAILER]* and *[NAME OF MARKETER]* have agreed to the return rights set out in this paragraph. The Site will notify *[NAME OF RETAILER]* customers that Products may only be returned if materially inoperable upon receipt (i.e., “dead on arrival”). *[NAME OF RETAILER]* customers are to receive a return authorization from *[NAME OF RETAILER]* prior to return of any of the Products. After receipt of the return authorization, *[NAME OF RETAILER]* will direct the customer to return the item directly to *[name of contractor]* contractor (or, if no such contractor, to *[name of party]*), provided that, in order for *[NAME OF RETAILER]* to receive credit for the return, the item must be received by the contractor (or *[name of party]*) within *[specification of period]* of the date the defective item was received by the customer (with all Products sent by U.S. mail deemed received by the customer within four mail delivery days of deposit in the mail), together with (from *[NAME OF RETAILER]*) the *[NAME OF RETAILER]* return authorization and the related order information. The contractor (or *[name of party]*) shall, *[statement of action]*, furnish *[NAME OF RETAILER]* a report of all returns received since the *[date of receipt]*. At the end of each *[specification of period]*, the contractor (or *[name of party]*) shall furnish *[NAME OF RETAILER]* a report of “unacceptable” returns, i.e., returns that do not meet one or more of the criteria set out above and therefore are not eligible for a credit memo from *[NAME OF MARKETER]* to *[NAME OF RETAILER]*.

8. Special Handling: For special handling (e.g., inserts), *[NAME OF MARKETER]* and *[NAME OF RETAILER]* shall agree in advance on the pricing to *[NAME OF RETAILER]*. In the case of inserts, such pricing shall be based on the type of insert.

9. Terms: Payment terms for Product (including for related freight charges) and fees will be *[text dollar amount of fees]* from (a) shipment date for all Products shipped by *[NAME OF MARKETER]* to *[NAME OF RETAILER]* customers in connection with the Fulfillment Services, (b) date of credit memo from *[NAME OF MARKETER]* to *[NAME OF RETAILER]* for returns pursuant to paragraph 7 above which qualify for a credit memo, or (c) date of the *[name of report]* report of unacceptable returns per Paragraph 7 above for returns which do not qualify for a credit memo, with a *[specification of grace period]* grace period in each case. *[NAME OF MARKETER]*, will furnish *[NAME OF RETAILER]* with a report of all Products shipped or returned and related freight and other charges during *[specification of period]*. On or before *[date of payment]*, *[NAME OF RETAILER]* will pay *[NAME OF MARKETER]*, by wire transfer, the amount indicated on that report. The report will be delivered electronically or on paper as mutually agreed by *[NAME OF MARKETER]* and *[NAME OF RETAILER]*. Absent mutual agreement, the report shall be issued on paper, by facsimile transmission with a hard copy to follow by recognized overnight courier.

*[NAME OF RETAILER]* understands that its credit line with *[NAME OF MARKETER]* will be as established or modified from time-to-time based upon *[NAME OF MARKETER]*'s credit review and credit policies. Any amounts not paid when due will be subject to a late charge of *[text dollar amount of charge]* per month (*[dollar amount per annum]*per annum) on the overdue balance (or, if less, the maximum amount permitted by applicable law). Payments received from *[NAME OF RETAILER]* will be credited first to unpaid interest as set out above.

10. Advertising: *[NAME OF RETAILER]* will not earn co-op advertising or market development funds of any kind in connection with this Agreement or the transactions contemplated by it. *[NAME OF RETAILER]* and *[NAME OF MARKETER]* will agree in advance on the compensation to be received by *[NAME OF MARKETER]* in the event *[NAME OF MARKETER]* obtains advertising for the Site.

11. Freight: The Products will be warehoused in Memphis, Tennessee, or such other location, as *[NAME OF MARKETER]* deems advisable. For shipments by *[NAME OF MARKETER]* to *[NAME OF RETAILER]* customers as part of the Fulfillment Services, *[NAME OF RETAILER]* will reimburse *[NAME OF MARKETER]* for that freight at *[NAME OF MARKETER]*'s actual cost (including discounts) at the same time and on the same basis as *[NAME OF RETAILER]* is required to pay *[NAME OF MARKETER]* for the underlying Products pursuant to the terms of this Agreement. The preceding sentence will govern the obligation of *[NAME OF RETAILER]* for freight notwithstanding any prior understanding or agreement of the parties or their prior course of dealing.

12. Term of Agreement: The term of this Agreement will terminate at the close of business on *[DATE OF CLOSING]*. If not terminated sooner in accordance with its terms, this Agreement shall automatically renew for successive one year terms, subject to the right of either party to terminate the Agreement during any renewal term on not less than *[number of days]* days' prior written notice to the other. Notwithstanding the foregoing, *[NAME OF MARKETER]* may terminate this Agreement immediately in the event *[NAME OF RETAILER]* becomes more than 15 days past due or otherwise violates its credit terms with *[NAME OF MARKETER]*.

13. Assignment: Neither party may assign this Agreement or its rights or obligations under it without the prior written consent of the other; provided, however, that either party may assign all of its rights and obligations under this Agreement without the prior written consent of the other party if the assignee is (a) an entity which directly or indirectly controls, is controlled by, or is under common control with the assigning party, or (b) an acquirer of substantially all of the assets of the assigning party via merger, stock sale, or other means; provided, further, that in each case the assignee expressly agrees in writing, for the benefit of the non-assigning party, to be bound by all terms, conditions, and obligations of the Agreement and the non-assigning party receives prompt notice of the assignment. In no event may either party assign this Agreement to a party reasonably deemed a competitor of the non-assigning party. In the event the assigning party is *[NAME OF RETAILER]* or an assignee of *[NAME OF RETAILER]*, *[NAME OF MARKETER]* reserves the right to independently analyze the credit line, if any, to be granted by *[NAME OF MARKETER]* to such assignee.

14. Confidentiality: *[NAME OF RETAILER]* and *[NAME OF MARKETER]* agree to keep the terms and conditions of this Agreement strictly confidential during the term of this Agreement and for the three year period following its termination. *[NAME OF RETAILER]* and *[NAME OF MARKETER]* agree not to disclose those terms and conditions in whole or in part to any party other than disclosure on a “need to know” basis to their respective employees, contractors, advisors, or affiliates whose duties reasonably justify the need for such knowledge. The following information shall be exempt from the provisions of this paragraph: (a) information required by law to be disclosed; and (b) information in the public domain through no act of *[NAME OF RETAILER]* or *[NAME OF MARKETER]*.

15. Limitation of Damages: NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER HEREUNDER FOR SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, DUE TO THE BREACH OR AN INTENDED BREACH OF THIS AGREEMENT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED THAT SUCH DAMAGES MAY RESULT FROM A BREACH.

16. Taxes: *[NAME OF RETAILER]* is the seller of the Products to its customers and shall be solely responsible for any and all sales and similar taxes arising from such sales. *[NAME OF RETAILER]* SHALL FOREVER DEFEND, INDEMNIFY, AND HOLD HARMLESS *[NAME OF MARKETER]* AND ITS PARTNERS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, FROM ANY AND ALL SALES AND SIMILAR TAX LIABILITY, INCLUDING INTEREST, PENALTIES, AND RELATED CHARGES, ARISING FROM THE SALE OF PRODUCTS TO *[NAME OF RETAILER]* CUSTOMERS OR THE SHIPMENT OF PRODUCTS BY *[NAME OF MARKETER]* TO *[NAME OF RETAILER]* CUSTOMERS (COLLECTIVELY, “TAXES”), EXCEPT TO THE EXTENT SUCH TAXES ARE LEVIED ON THE INCOME *[NAME OF MARKETER]* DERIVES FROM SALES TO *[NAME OF RETAILER]*.

17. *[NAME OF COMPANY 1]*: *[NAME OF RETAILER]* acknowledges that a *[NAME OF COMPANY 1]* affiliate is an owner of *[NAME OF MARKETER]*. *[NAME OF RETAILER]* acknowledges, for the benefit of *[NAME OF COMPANY 1]* and *[NAME OF MARKETER]*, that this Agreement does not in any way affect or limit the rights of *[NAME OF COMPANY 1]* and, indirectly, *[NAME OF MARKETER]*, under the Noncompetition Agreement among *[names of parties]*, dated as of *[DATE OF AGREEMENT]*. *[NAME OF MARKETER]* may furnish some or all of the Products or the Fulfillment Services through *[NAME OF COMPANY 1]* as agent or as consignee of *[NAME OF MARKETER]*, or as both agent and consignee. *[NAME OF RETAILER]* will make all payments to *[NAME OF COMPANY 1]* as agent of *[NAME OF MARKETER]* until the later of the date *[NAME OF RETAILER]* has the systems capability to treat *[NAME OF MARKETER]* as a separate vendor and the date *[NAME OF RETAILER]* is notified by *[NAME OF MARKETER]* to make payments directly to *[NAME OF MARKETER]*. During the time *[NAME OF RETAILER]* is to make payment to *[NAME OF COMPANY 1]* as agent of *[NAME OF MARKETER]*, all shipments containing both the Products and items supplied by *[NAME OF COMPANY 1]* to *[NAME OF RETAILER]* pursuant to the supply agreement between them will be subject to the terms of this Agreement, i.e., payment will be made pursuant to item 9 above. Any amounts due and owing between *[NAME OF MARKETER]* and *[NAME OF RETAILER]* shall be separate from and not subject to offset against any amounts due and owing between *[NAME OF COMPANY 1]* and *[NAME OF RETAILER]*.

18. Notices: Notices under this Agreement shall, except as otherwise specifically provided in this Agreement, be sent to *[NAME OF MARKETER]* at the letterhead address first appearing above, Attn: *[Name of addressee]*, with a copy to *[NAME OF COMPANY 1]*, *[ADDRESS OF COMPANY 1]*, Attn: General Counsel; and to *[NAME OF RETAILER]* at the address first set out above, Attn: *[Name of addressee]*, with a copy to the attention of General Counsel at the same address. Notices shall be deemed received when delivered or, if mailed, five days after the date of mailing, properly addressed with proper postage.

19. Miscellaneous: The headings of this Agreement are included for purposes of convenience only, and do not affect the construction or interpretation of any of its provisions. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter. Any modification of this Agreement must be in writing signed by the parties. This Agreement shall be binding on, and shall benefit, the parties and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with Tennessee law. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. If the terms and conditions set out in this Agreement are accepted and agreed to by *[NAME OF RETAILER]*, please execute and return to me the attached counterpart of this letter to indicate that acceptance and agreement, and keep the other counterpart in your files. We look forward to a mutually prosperous relationship.

Sincerely,

*[NAME OF MARKETER]*

*[NAMES OF PARTIES]*

Exhibit A

 Fulfillment Services

1. Order Transmission and Processing. *[NAME OF RETAILER]* has adopted the *[manner of order]*-based order delivery format to send orders to *[NAME OF MARKETER]* or its contractor, which contractor is presently *[NAME OF COMPANY 1]*. References to *[NAME OF COMPANY 1]* in this Exhibit A shall be deemed references to *[NAME OF COMPANY 1]* or any successor contractor. *[NAME OF RETAILER]* will send orders to *[NAME OF COMPANY 1]* in continuous serial transmissions in intervals of no less than one hour. *[NAME OF MARKETER]* will use commercially reasonable efforts to service priority and standard orders as set out below.

If priority orders (orders to be shipped via overnight or second day airfreight) are received by *[NAME OF COMPANY 1]* and available in *[NAME OF COMPANY 1]*'s warehouse by *[name of party]* on an *[NAME OF COMPANY 1]* business day, *[NAME OF COMPANY 1]* will use commercially reasonable efforts to ship the order *[name of product ordered]*. If a priority order is not received and available until after *[designation of date]*, *[NAME OF COMPANY 1]* will use commercially reasonable efforts to ship the order *[name of product ordered]*.

If standard (i.e., other than priority) orders are received by *[NAME OF COMPANY 1]* and available in *[NAME OF COMPANY 1]*'s warehouse by *[name of party]* on an *[NAME OF COMPANY 1]* business day, *[NAME OF COMPANY 1]* will use commercially reasonable efforts to ship the order *[name of product ordered]*. If a standard order is not received and available until after *[designation of date]*, *[NAME OF COMPANY 1]* will use commercially reasonable efforts to ship the order *[name of product ordered]*.

For any orders not sent in a continuous serial transmission in intervals of no less than one hour, *[NAME OF COMPANY 1]* will use commercially reasonable efforts to ship the order within the later of 24 hours of the order being received by *[NAME OF COMPANY 1]* and being available in *[NAME OF COMPANY 1]*'s warehouse, or the next *[NAME OF COMPANY 1]* business day.

Orders must be complete and neither *[NAME OF MARKETER]* nor *[NAME OF COMPANY 1]* will have any obligation for any order containing incomplete information.

2. Returns Handling Fee. *[NAME OF RETAILER]* will pay *[NAME OF MARKETER]* a *[text dollar amount of handling fee]* handling fee for all units returned to *[NAME OF MARKETER]* or its contractor by any *[NAME OF RETAILER]* customer. This fee will be paid per Paragraph 9 of the Agreement.

3. Lack of Availability. If any Product subject to an Acceptance Notice is not available for any reason, *[NAME OF MARKETER]* will notify *[NAME OF RETAILER]* electronically no later than *[designation of date]* following receipt of the order. *[NAME OF RETAILER]* will have sole responsibility for notifying visitors to the Site that quantities and availability of each SKU are extremely limited or, if applicable, that the SKU is no longer available. DUE TO THE CLOSE OUT OR LIQUIDATION NATURE OF THE PRODUCTS AND THE NON-EXCLUSIVE NATURE OF THIS ARRANGEMENT, *[NAME OF MARKETER]* CANNOT AND WILL NOT BE RESPONSIBLE FOR LACK OF AVAILABILITY, FAILURE TO PROVIDE NOTICE TO *[NAME OF RETAILER]* OR ANY OTHER PARTY, OR BACKORDERS.

4. Reports. *[NAME OF MARKETER]*, will furnish a report to *[NAME OF RETAILER]* electronically indicating orders shipped, orders rejected due to incomplete information, and orders rejected due to unavailable Product.

5. Service. *[NAME OF MARKETER]* will render all services in a commercially reasonable, professional manner, but will have no liability to *[NAME OF RETAILER]* except to the extent due to *[NAME OF MARKETER]*'s gross negligence or willful misconduct. IN NO EVENT WILL *[NAME OF COMPANY 1]* OR ANY OTHER *[NAME OF MARKETER]* CONTRACTOR HAVE ANY LIABILITY TO *[NAME OF MARKETER]*.

6. Title to Products. Title to the Products shall remain with *[NAME OF MARKETER]* until delivered to the common carrier addressed to the *[NAME OF RETAILER]* customer according to the order, at which time it shall pass to *[NAME OF RETAILER]* until delivered to the *[NAME OF RETAILER]* customer.