

03-06-2001



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#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

#### Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date  
Month Day Year

Formerly

74530640

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

12/21/2000 DNGUYEN 00000426 74530040

#### FOR OFFICE USE ONLY

01 FC:481 40.00 OP  
02 FC:482 100.00 OP

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TRADEMARK  
REEL: 002201 FRAME: 0364

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

<input type="text" value="74530040"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="74530041"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="1813406"/>	<input type="text" value="2136076"/>	<input type="text"/>
<input type="text" value="1294079"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Matthew W. Walch

November 30, 2000

Name of Person Signing

Signature

Date Signed

## BILL OF SALE AND ASSIGNMENT OF ASSETS

Pursuant to a certain Asset Purchase Agreement dated as of May 3, 2000 by and among SYSTEM SOFTWARE ASSOCIATES, INC., a Delaware corporation ("Seller"), GORES TECHNOLOGY GROUP, a California corporation ("Gores"), and SSA ACQUISITION CORPORATION, a Delaware corporation ("Purchaser"), as amended by an Amendment dated as of June 5, 2000, a Second Amendment dated as of June 9, 2000 and a Third Amendment dated as of July 10, 2000 (the "Agreement"), for good and valuable consideration paid to Seller by or on behalf of Purchaser, the receipt of which is hereby acknowledged by Seller, Seller does hereby sell, transfer, assign, convey and deliver to Purchaser the "Acquired Assets" (all capitalized terms not defined herein shall have the meanings specified in the Agreement), including, without limitation, all right, title and interest of Seller in, to and under:

- (a) Cash and investments and similar accounts and the contents thereof (other than Cash Proceeds of \$3,585,049);
- (b) Lockbox accounts;
- (c) Accounts receivable, trade receivable and similar rights, including intercompany receivables;
- (d) Notes and other receivable and similar rights;
- (e) Prepaid assets and credits;
- (f) Property, plant and equipment, including without limitation, assets used by Retained Employees, equipment, machinery, computer hardware and software and related items, furniture, fixtures, telecommunications equipment;
- (g) Books and records;
- (h) Customer lists;
- (i) Internet and intranet websites, including all data, code and content;
- (j) Telephone numbers;
- (k) Stock of all subsidiaries other than those excluded on Schedule 1.02 of the Agreement;
- (l) Causes of action in favor of Seller or the Business;
- (m) Permits;

- (n) Guarantees, warranties, indemnities and similar rights in favor of the Seller or the Business;
- (o) Intellectual property, goodwill and other intangible assets;
- (p) General intangibles; and
- (q) The executory contracts and unexpired leases of Seller listed on Schedule 1.01(b) to the Asset Purchase Agreement.

TO HAVE AND TO HOLD the Acquired Assets unto Purchaser, its successors and assigns to and for its own use and benefit forever.

ALL OF THE ASSETS AND RIGHTS SOLD HEREUNDER ARE SOLD TO PURCHASER "AS IS" WITHOUT ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR INTENDED USE, OR OTHERWISE.


Seller further agrees to use all commercially reasonable efforts to execute and deliver such other instruments of conveyance or transfer and take such other action as may be reasonably requested to implement more effectively the conveyance and transfer of the Acquired Assets to the Purchaser in accordance with the Section 363/365 Order.

Seller irrevocably designates, makes, constitutes and appoints Purchaser (and all persons designated by Purchaser) as Seller's true and lawful attorney in fact, to (i) demand payment of all accounts receivable included in the Acquired Assets, (ii) enforce payment of all accounts receivable included in the Acquired Assets, (iii) exercise all of the Seller's rights and remedies with respect to proceedings brought to collect any accounts receivable included in the Acquired Assets, (iv) sell or assign any accounts receivable included in the Acquired Assets upon such terms, for such amount and at such time or times as Purchaser deems advisable, and (v) take control in any manner of any items or proceeds of any accounts receivable included in the Acquired Assets.

This Bill of Sale and Assignment shall be binding upon Seller, its successors and assigns, and shall inure to the benefit of Purchaser, its successors and assigns.

IN WITNESS WHEREOF, Seller has caused this instrument to be duly executed and delivered as of this 31 day of July, 2000.

SYSTEM SOFTWARE ASSOCIATES, INC.

By   
Name \_\_\_\_\_  
Title \_\_\_\_\_

---

**ASSET PURCHASE AGREEMENT**

**by and among**

**SYSTEM SOFTWARE ASSOCIATES, INC.**

**as Seller**

**and**

**GORES TECHNOLOGY GROUP**

**and**

**SSA ACQUISITION CORPORATION**

**as Purchaser**

**Dated as of May 3, 2000**

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## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT, dated as of May 3, 2000 (the "Agreement"), is made by and among SYSTEM SOFTWARE ASSOCIATES, INC., a Delaware corporation (the "Seller"), GORES TECHNOLOGY GROUP, a California corporation, but only for purposes of Article 4 hereof ("Gores") and SSA Acquisition Corporation, a Delaware corporation (the "Purchaser"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Article 9.

WHEREAS, the Seller is engaged, on its own behalf and through its subsidiaries, in the business of developing, marketing, selling and delivering enterprise resource planning software and related services (collectively, the "Business");

WHEREAS, the Seller plans to seek relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") by filing a case (the "Chapter 11 Case") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, the Purchaser desires to purchase the assets of the Seller related to the Business and assume certain liabilities from the Seller, and the Seller desires to sell, convey, assign and transfer to the Purchaser, substantially all of the assets and properties related to the Business together with certain obligations and liabilities relating thereto, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code; and

WHEREAS, the Acquired Assets will be sold pursuant to an order of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code, and such sale will include the assumption and assignment of certain executory contracts and unexpired leases and liabilities thereunder under Section 365 of the Bankruptcy Code and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

### **ARTICLE 1. PURCHASE AND SALE OF ASSETS**

#### **SECTION 1.01      *Acquired Assets.***

(a) *Section 363 Assigned Assets.* Pursuant to Section 363 of the Bankruptcy Code and on the terms and subject to the conditions precedent set forth in this Agreement, at the Closing the Seller shall sell, assign, transfer, convey, and deliver to the Purchaser, and the Purchaser shall purchase and accept from the Seller, all of the Seller's rights, title, and interests in, to and under all of the assets, property, rights and claims of the Seller of every kind and description, wherever located, real, personal or mixed, whether tangible or intangible, owned, held or used in the conduct of the Business by the



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Seller including, without limitation, as set forth in Schedule 1.01(a) (as amended by Purchaser from time to time prior to Closing) (collectively, the "Section 363 Assigned Assets"); provided that the Section 363 Assigned Assets shall not include any executory contracts or unexpired leases, which are dealt with exclusively in Section 1.01(b), nor shall they include the Excluded Assets as provided in Section 1.02.

(b) *Section 365 Assumed Rights.* Pursuant to Section 365 of the Bankruptcy Code, at the Closing the Seller shall assume and assign to the Purchaser, and the Purchaser shall accept from the Seller, all of the Seller's and the Acquired Subsidiaries' rights under and title and interest in all of Seller's executory contracts and unexpired leases listed on Schedule 1.01(b) (as amended by Purchaser from time to time prior to Closing) (collectively, the "Section 365 Assumed Rights"); provided, however, that nothing in this Section 1.01(b) shall require Seller to assume, and the Section 365 Assumed Rights shall not include, any executory contracts or unexpired leases that would cause the Cure Costs (as defined in Section 1.03) payable by Seller to exceed \$4,000,000. Any other executory contracts or leases not included as Section 365 Assumed Rights are referred to herein as the "Excluded Contracts."

(c) *Intellectual Property Rights.* The assets so transferred shall, pursuant to Sections 363 and 365 of the Bankruptcy Code, include all of Seller's rights, title and interest in, to and under all Intellectual Property, in each case owned or licensed by the Seller and used or held or held for use in the Business, including the items listed in Schedule 3.08(a).

**SECTION 1.02** *Excluded Assets.* Notwithstanding the foregoing, the Purchaser expressly understands and agrees that (a) the assets and properties of the Seller listed on Schedule 1.02 (as amended from time to time by Purchaser prior to Closing) and (b) the Excluded Contracts (collectively, the "Excluded Assets") shall be excluded from the Acquired Assets.

**SECTION 1.03** *Cure Costs.* The Seller shall take all commercially reasonable steps, including paying up to an aggregate of \$4,000,000 of necessary costs (the "Cure Costs"), to achieve cure and reinstatement of and the assumption and assignment of the Section 365 Assumed Rights. The Purchaser shall have the right to determine, prior to Closing, which executory contracts and unexpired leases shall be assumed and assigned and shall have the right and full authority to negotiate cure amounts with non-debtor parties to such contracts and leases.

**SECTION 1.04** *Assumed Liabilities.* On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser shall assume from the Seller and thereafter pay, perform or discharge in accordance with their terms all of the liabilities and obligations arising under the Assumed Rights and all of the liabilities and obligations set forth on Schedule 1.04. The liabilities to be assumed pursuant to this Agreement shall be referred to herein as the "Assumed Liabilities."

**SECTION 1.05** *Excluded Liabilities.* Notwithstanding any provision in this Agreement or any other writing or commitment (written or oral) to the contrary, the Purchaser is

assuming only the Assumed Liabilities and is not assuming any other liability or obligation of the Seller (or any predecessors of the Seller or any prior owners of all or part of their businesses and assets) of whatever nature, whether presently in existence or arising hereafter. All such other liabilities and obligations shall be retained by and remain obligations and liabilities of the Seller (all such liabilities and obligations not being assumed being herein referred to as the "Excluded Liabilities"). Notwithstanding anything to the contrary in Section 1.04, none of the following shall be Assumed Liabilities for the purposes of this Agreement:

- (a) any liability or obligation under any Environmental Laws that is not an Assumed Liability;
- (b) any liability or obligation related to employees of Seller, except as provided in Section 5.06(c)(ii);
- (c) any liability or obligation for Designated Chapter 11 Costs and any contracts related thereto;
- (d) any liability or obligation for indebtedness for borrowed money or evidenced by bonds or notes (including accrued interest and fees with respect thereto);
- (e) any Taxes for which Seller is liable pursuant to Section 10.04(a)(i) or any other provision of this Agreement;
- (f) any liability or obligation arising out of or relating to any investigation of Seller's revenue recognition practices by the Securities and Exchange Commission (the "SEC");
- (g) any liability or obligation relating to an Excluded Asset; and
- (h) any liability or obligation under any International Plan, Employee Plan or Benefit Arrangement, except as provided in Section 5.06(c)(ii).

**SECTION 1.06**      *Purchase Price.*

(a) In consideration for the Acquired Assets, the Purchaser shall pay to the Seller at the Closing (i) cash by wire transfer in an amount determined pursuant to the first sentence of Section 1.06(b) below (the "Cash Proceeds") less (ii) the Deposits (as defined in Section 1.07 below) and any interest credited thereon plus (iii) a number of shares equal to 25% of Purchaser's common stock, par value \$.01 per share, to be outstanding immediately after the Closing (the "Stock Proceeds" and together with the Cash Proceeds, the "Purchase Price"). The Purchase Price shall be paid as provided in Section 2.02(b).

(b) The Cash Proceeds shall be equal to: (i) (A) the amount necessary to release from Seller's estate the first priority lien held by Seller's existing senior secured

lenders (the "Pre-Petition Facility") plus (B) the cost to cure defaults under leases and contracts to be assumed by Purchaser up to \$4,000,000 plus (C) the amount necessary to retire a post-petition financing facility in the amount of up to \$11,740,000 (the "DIP Financing") plus the related fees and expenses of the lenders providing the DIP Financing plus (D) \$2,000,000. The parties hereto recognize that the amount provided pursuant to Section 1.06(b)(i)(C) may be less than \$11,740,000. The Purchase Price (plus Assumed Liabilities to the extent properly taken into account under the Code and the Treasury Regulations promulgated thereunder), and any subsequent adjustments thereof, shall be allocated among the Acquired Assets in a manner consistent with the values set forth in the Purchase Price allocation schedule set forth on Schedule 1.06(b), which schedule shall be prepared by the Closing Date. The Purchaser and the Seller agree to be bound by such allocation and to file all Tax returns and reports (including IRS Form 8594) with respect to the transactions contemplated by this Agreement (including any subsequent adjustments to the Purchase Price), including, but not limited to, all federal, state and local Tax returns, on the basis of such allocation, and shall take no position contrary thereto unless required to do so pursuant to a determination (as defined in Section 1313(a) of the Code) or any similar state, foreign or local tax provision.

**SECTION 1.07**      *Deposits.* Pursuant to the terms of that certain Letter Agreement dated as of April 6, 2000 by and between the Seller and Gores Technology Group (the "Letter Agreement"), Purchaser or one of its Affiliates has paid to counsel for Seller a deposit in the amount of \$250,000 (the "Initial Deposit"). Upon receipt of commitments satisfactory to Purchaser from Foothill Capital Corporation and Cerberus Partners with respect to the treatment of their existing secured debt, Purchaser shall wire transfer to counsel for Seller an additional \$250,000 deposit (the "Additional Deposit," and together with the Initial Deposit, and, with any interest credited to the Additional Deposit and the Initial Deposit, the "Deposits"). Counsel for Seller will hold the Deposits pursuant to a letter agreement dated as of April 7, 2000 by and among Seller, Gores and counsel for Seller. The Deposits will be invested as provided in such letter agreement. The Deposits shall be applied towards the Cash Proceeds on the Closing Date; provided, however, that the Deposits shall be refunded to the Purchaser in the event the Closing does not occur for any reason other than as set forth in Section 7.02(b).

## **ARTICLE 2. THE CLOSING**

**SECTION 2.01**      *Closing.* The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Latham & Watkins located at 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606 at 10:00 a.m. (a) within one business day after the conditions set forth in Article 6 shall have been satisfied or waived or (b) at such other time, date and place as shall be fixed by agreement among the parties (the date of the Closing being herein referred to as the "Closing Date").

**SECTION 2.02**      *Deliveries at Closing.*

(a) At the Closing, the Seller shall deliver to the Purchaser (1) such deeds, bills of sale, assignments of leases and contracts, and any other instruments of conveyance (collectively, the "Conveyance Documents") that, in the reasonable judgment of Purchaser, are reasonable and necessary to effectively vest in Purchaser good, valid and insurable title to the Acquired Assets, free and clear of all liens, claims, encumbrances, interests and security interests of any nature or kind whatsoever (other than Permitted Exceptions) pursuant to the terms of this Agreement, and (2) such other customary closing documents, instruments or certificates required to be delivered as a condition precedent to the Purchaser's obligations under this Agreement.

(b) At the Closing, the Purchaser shall deliver to the Seller (1) such duly executed instruments as are deemed necessary or appropriate to effectuate the assumption of the Assumed Liabilities by the Purchaser; (2) such other customary closing documents, instruments or certificates required to be delivered as a condition precedent to the Seller's obligations under this Agreement; (3) the Cash Proceeds less the Deposits; and (4) one or more stock certificates registered in the name of Seller or as Seller may direct representing the Stock Proceeds.

### **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE SELLER**

The Seller represents and warrants to the Purchaser as follows:

**SECTION 3.01**        *Organization.* The Seller and each of the Acquired Subsidiaries is a corporation validly existing and has the corporate power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business. The Seller and each of the Material Subsidiaries listed on Schedule 3.01 are in good standing under the laws of the jurisdiction of its incorporation and in each jurisdiction where the operations of the Business require such qualification, except where the failure to be in good standing would not individually or in the aggregate have a Material Adverse Effect. All of the outstanding and issued shares of capital stock of each of the Acquired Subsidiaries (other than directors' qualifying shares) are owned, directly or indirectly, of record and beneficially by Seller. None of the capital stock of any Acquired Subsidiary is subject to the issuance of any security, instrument, warrant, option, purchase right, conversion or exchange right, call, commitment or claim of any right, title, or interest therein or thereto. Schedule 3.01 lists all of Seller's subsidiaries and all holders of directors' qualifying shares of any Acquired Subsidiary.

**SECTION 3.02**        *Authority Relative to this Agreement.* The Seller has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement by the Seller and the consummation by the Seller of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement has been duly and validly executed and delivered by the Seller and (assuming this Agreement constitutes a valid and binding obligation of the Purchaser), will constitute a valid and binding obligation of the Seller after the Petition Date upon the entry of the Section 363/365 Order; provided, however, that, subject to the approval of this Agreement by the

Bankruptcy Court, if the Seller breaches this Agreement, the Purchaser's damages shall be deemed an administrative priority claim under 11 U.S.C. Sections 503(b) and 507(a).

**SECTION 3.03**      *Consents and Approvals.* No consent, approval, order, or authorization of, or declaration, filing or registration with, any governmental or regulatory authority is required to be made or obtained by the Seller or any of the Acquired Subsidiaries in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby, except (a) for consents, orders, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, (b) for consents, approvals or authorizations which may be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and (c) for consents, orders, approvals, authorization, declarations, filings or registrations, which, if not obtained, would not, individually or in the aggregate, have a Material Adverse Effect.

**SECTION 3.04**      *Financial Statements.* The Seller has heretofore delivered or made available to the Purchaser financial statements (the "Financial Statements") for the fiscal year ended October 31, 1999 and the three months ended January 31, 2000. The Financial Statements fairly present in all material respects the financial condition, cash flows, changes in stockholders equity and results of operation of the Business on a consolidated basis as at the dates thereof and for the periods then ending in accordance with GAAP applied on a consistent basis (except as may be indicated in the notes thereto and except, in the case of unaudited financial statements for the lack of footnotes and normal, immaterial year-end audit adjustments).

**SECTION 3.05**      *Certain Assets.*

(a) Schedule 3.05(a) sets forth the street addresses of all real property used or held for use in the Business (the "Real Property"), which the Seller owns, leases, operates or subleases, specifying whether such Real Property is owned or leased and in the case of leases or subleases, the name of the lessor or sublessor.

(b) The Seller (i) owns fee simple title to the Real Property designated on Schedule 3.05(a) as being owned by the Seller and (ii) except as set forth in Schedule 3.05(d), has a valid leasehold interest in the Real Property designated on Schedule 3.05(a) as being leased or subleased by the Seller.

(c) Except as set forth in Schedule 3.07(b), the Seller has good and valid title to, or a valid leasehold interest in, all tangible personal property included in the Acquired Assets.

(d) Except as described in Schedule 3.05(d), there does not exist under any material lease of Real Property, any material default or any event which with notice or lapse of time or both would constitute a default other than defaults caused solely by filing the Chapter 11 Case.

(e) Except for the Excluded Assets, the Acquired Assets constitute all of the property and assets used or held for use in the Business and are adequate to conduct the Business as currently conducted.

**SECTION 3.06** *Brokers.* Except for Houlihan, Lokey, Howard & Zukin, whose fee is the sole responsibility of the Seller, no person is entitled to any brokerage, financial advisory or finder's fee or similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller or any of the Acquired Subsidiaries.

**SECTION 3.07** *Material Contracts.*

(a) Except as disclosed in Schedule 3.07(a) as of the date hereof, the Seller is not a party to or bound by:

(i) any lease for personal property requiring aggregate payments by Seller or an Acquired Subsidiary after Closing of \$100,000 or more;

(ii) any agreement for the purchase of materials, supplies, goods, services, equipment or other assets that has a term of at least one year or that requires aggregate payments by Seller or an Acquired Subsidiary after Closing of \$100,000 or more;

(iii) any other agreement that requires aggregate payments by Seller or an Acquired Subsidiary after Closing of \$100,000 or more;

(iv) any sales, distribution or other similar agreements not entered into in the ordinary course providing for the sale by the Seller or (as of the Closing) an Acquired Subsidiary of materials, supplies, goods, services, equipment or other assets that requires aggregate payments after Closing of \$100,000 or more;

(v) any partnership, joint venture or other similar agreement or arrangement;

(vi) any agency, dealer, sales representative, marketing or other similar agreement;

(vii) any agreement that limits the freedom of the Seller or (as of the Closing) an Acquired Subsidiary to compete in any line of business or with any Person or in any area or to own, operate, sell, transfer, pledge or otherwise dispose of or encumber any Acquired Asset or which would so limit the freedom of the Purchaser after the Closing Date (other than Software License Agreements and Professional Service Agreements which to Seller's knowledge after reasonable inquiry have no such restrictions material to the Business); or

(viii) any contract or agreement (other than Software License Agreements) to which a Subsidiary is also a party or guarantor.

The agreements and contracts required to be disclosed on Schedule 3.07(a) are referred to herein as the "Material Contracts."

(b) Except for payment defaults set forth on Schedule 3.07(b), to the Seller's knowledge after reasonable inquiry, neither the Seller nor any other party thereto is in default or breach in any material respect under the terms of any Material Contract and no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a default or breach thereunder (except for defaults and breaches caused solely by filing the Chapter 11 Case). True and complete copies of each Material Contract have been delivered or made available to the Purchaser.

(c) Seller has delivered to Purchaser a list of all contracts for which deferred revenue is reflected on Seller's books and records as of April 13, 2000.

### SECTION 3.08 *Intellectual Property.*

(a) Schedule 3.08(a) of this Agreement contains a complete and accurate list of all (i) registered Intellectual Property and unregistered trademarks owned by Seller or any Acquired Subsidiary and (ii) computer software sold or licensed by Seller or any Acquired Subsidiary in the ordinary course of business. With respect to the trademarks and U.S. patents listed on Schedule 3.08(a), such schedule also specifies (A) the jurisdictions in which such trademarks or U.S. patents are registered or in which an application for registration has been filed; (B) the registration or application numbers; (C) with respect to the trademarks, the termination or expiration dates; and (D) whether the owner thereof is not the Seller. Seller has delivered to Purchaser a list, to Seller's knowledge after reasonable inquiry, of all of Seller's customers who have entered into Software License Agreements and Professional Services Agreements since April 1988.

(b) Schedule 3.08(b) sets forth a list of all licenses, sublicenses and other agreements (other than "shrink-wrap" license agreements) as to which the Seller is a party and pursuant to which any Person is authorized to use any Intellectual Property.

(c) Except as set forth on Schedule 3.08(c), as of the date hereof, since January 1, 1999, neither Seller nor (as of the Closing) any Acquired Subsidiary has been a defendant in any action, suit or proceeding relating to, and has not received any written claim alleging that the Seller or any Acquired Subsidiary is infringing upon the Intellectual Property of others. To the Seller's knowledge after reasonable inquiry, no other person is infringing upon any Intellectual Property owned by Seller or an Acquired Subsidiary and the Seller is not infringing upon the Intellectual Property of any other Person except in each case as would not have a Material Adverse Effect. No Intellectual Property owned by Seller or an Acquired Subsidiary is subject to any outstanding judgment, injunction, order, decree or agreement restricting the use thereof by the Seller or (as of the Closing) any Acquired Subsidiary with respect to the Business or restricting



the licensing thereof by the Seller or (as of the Closing) any Acquired Subsidiary to any Person.

(d) Except as set forth on Schedule 3.08(d), there shall be no fees, costs or assessments required to assign or sell the Intellectual Property to Purchaser.

(e) Except as set forth on Schedule 3.08(e), the Seller is not aware of any defenses which a non-Seller party may have to the assignment or sale of the Intellectual Property to Purchaser.

**SECTION 3.09**      *Required and Other Consents.* Schedule 3.09 sets forth each agreement, contract, lease or other instrument binding upon Seller that will constitute a Section 365 Assumed Right or an Assumed Liability which requires the consent, including, without limitation, any consent with respect to a change of control, or other action by any Person as a result of the execution, delivery and performance of this Agreement, unless such document can be assumed and assigned without such consent under the Bankruptcy Code except such consents or actions as would not, individually or in the aggregate, have a Material Adverse Effect if not received or taken by the Closing Date.

**SECTION 3.10**      *Absence of Certain Changes.* Except as disclosed in Schedule 3.10, since the Balance Sheet Date, the Business and the business of the Acquired Subsidiaries have been conducted in the ordinary course, and there has not been:

(a) any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the Business or any Acquired Asset which, individually or in the aggregate, has had or could reasonably be expected to have individually or in the aggregate a Material Adverse Effect;

(b) any change in any method of accounting or accounting practice by the Seller with respect to the Business or by the Acquired Subsidiaries with respect to their respective businesses except for any such change after the date hereof required by reason of a change in GAAP;

(c) any labor dispute, other than routine individual grievances, or any activity or proceeding by a labor union or representative thereof to organize any employees of the Business, which employees were not subject to a collective bargaining agreement at the Balance Sheet Date, or any lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to employees of the Business;

(d) any sale or other disposition of any material assets other than sales of products in the ordinary course of business;

(e) any closing agreement or other agreement entered into with a Taxing Authority to settle any claim or assessment for Taxes on a basis that would increase the Tax liability of any of the Acquired Subsidiaries for a Post-Closing Tax Period; or

IN WITNESS WHEREOF, the Seller, Gores and the Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

SYSTEM SOFTWARE ASSOCIATES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GORES TECHNOLOGY GROUP (for purposes of Article 4 only)

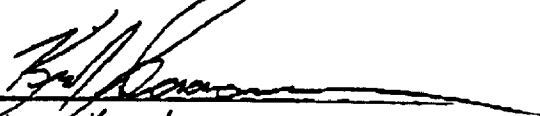
By: DM  
Name: DAVID MCGOVERN  
Title: vice President

SSA ACQUISITION CORPORATION

By: DM  
Name: DAVID MCGOVERN  
Title: Vice President

IN WITNESS WHEREOF, the Seller, Gores and the Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

SYSTEM SOFTWARE ASSOCIATES, INC.

By:   
Name: MAX ISAACSON  
Title: V.P. & General Counsel

GORES TECHNOLOGY GROUP (for purposes of Article 4 only)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SSA ACQUISITION CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 3.08(a)**

**Registered Trademarks:**

COUNTRY NAME	TRADEMARK	STATUS	REGISTRATION NO.	APPLN. NO.	RENEWAL DATE
Benelux	BPCS	Registered	460,446	725,972	3-Mar-09
Brazil	AS/SET	Registered	815734409	815734409	30-Aug-00
	AS/SET	Registered	815734417	815734417	7-Apr-02
	BPCS	Registered	815734433	815734433	7-Apr-02
	BPCS	Registered	815734425	815734425	7-Apr-02
	SSA LOGO	Abandoned			
	SSA LOGO	Registered	815738668	815738668	7-Apr-02
	SYSTEM SOFTWARE ASSOCIATES	Registered	815734395	815734395	21-Apr-02
	SYSTEM SOFTWARE ASSOCIATES	Registered	815734387	815734387	7-Apr-02
Canada	AS/SET	Pending		651,318	
European Community	BPCS	Pending		942185	
	SSA*	Pending		449124	
France	BPCS	Registered	1,544,352	147261	1-Aug-09
	SYSTEM SOFTWARE ASSOCIATES	Registered	1,544,353	147262	1-Aug-09
Japan	AS/SET	Registered	269921	2-28122	30-Nov-04
	BASICS	Abandoned		2-39600	
	BPCS	Registered	2527729	2-45426	28-Apr-03
	SSA	Abandoned		2-39599	
United Kingdom	AS/SET	Abandoned		1,419,348	
United States of America	AS/SET	Registered	1813406	27,135	28-Dec-03
	AS/VISION	Abandoned		74/513929	
	BPCS	Registered	1294079	442591	11-Sep-04
	CEA	Abandoned		74/641033	
	CEF	Abandoned		74/641026	
	CONFIGURABLE ENTERPRISE A	Abandoned		74/641028	

TRADE MARK

CONFIGURABLE ENTERPRISE FI	Abandoned	641029	
FAST RESULTS logo	Abandoned	75/378744	
MAIN/TRACKER	Registered	729824	28-Feb-09
SSA*	Pending	530040	
SSA ACCLAIM SEQUENCE logo	Instructed		
SSA logo	Pending		
USERVISION	Registered	2,136,076	10-Feb-08

\*SAS Institute filed oppositions to SSA's applications to register its trademark "SSA" in both the U.S. and the European Community. Both oppositions are pending.

**Unregistered Trademarks:**

SSA Portfolio  
eBPCS  
iFramework

**Registered Domain Names:**

ssax.com  
ssaportfolio.com  
ebpcs.com  
bpcsportfolio.com  
bpcusers.com

**Copyrights:**

eBPCS Version 6.1 – Registration # TX 4-942-451 – Effective August 6, 1999  
SMG's Version 6.1 GA – Registration #TX 4-942-450 – Effective August 6, 1999

TRADEMARK