

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "**Agreement**"), dated as of this 1st day of July, 2024, is by and between ClearlyIP Inc. a Delaware Corporation ("**Buyer**"), XCastLabs, Inc, a California Corporation ("**Seller**"), and Patricia Mathis (together the "**Principals**").

Recitals

WHEREAS, Seller has developed a software Unified Communications as a Service (UCaaS) PBX, SIP Trunking and a Billing platform which is used to provide service to various resellers and customers (the "**Business**").

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, certain assets relating to the Business and including the Software upon the terms and provisions and subject to the conditions hereinafter set forth.

Agreement

In consideration of the foregoing and the mutual covenants and agreements hereinafter set forth (the receipt and adequacy of which are hereby acknowledged by the parties), the parties hereto hereby agree as follows:

1. Purchase of Assets; Payment

1.1. Assets to be Transferred. Upon the terms and subject to the conditions set forth in this Agreement, and in reliance upon the representations, warranties and covenants made hereby by each party to the other, Seller will, on the Closing Date, sell, assign, transfer, convey and deliver to Buyer, (free and clear of any lien) and Buyer will purchase and accept from Seller, (free and clear of any lien) all right, title and interest of Seller in and to all the assets, wherever situated, of Seller, that are identified in Schedules 1.1(a), 1.1(b), 1.1(c), 1.1(d) and 1.1(e) hereto and below (individually, each item an "**Asset**," and collectively, the "**Assets**"). The Assets include the following:

(a) the Business customer and reseller contracts, installations, any and all transferable licenses and permits relating to the Business, all marketing and advertising materials relating to the Business, and the confidential information and other general intangibles and information relating to running the Business and also anything explicitly set forth in Schedule 1.1(a) hereto ;

(b) supplier contracts with respect to services contracted with Seller, and all other contract rights and warranties relating to the Business, including the written contracts between Seller and suppliers as identified and set forth in Schedule 1.1(b) hereto (collectively, the "**Assigned Contracts**");

(c) the domain names that are set forth in Schedule 1.1(c) hereto (the "**Domain Names**");

(d) the software developed by the Seller for the Business, all intellectual property and proprietary rights, common law or statutory, including (without limitation) all patents, trade names trademarks, copyrights, service marks, registrations, trade secrets and source code (collectively, "**Intellectual Property**"), owned or licensed by Seller, for the products sold by the Business as set forth in Schedule 1.1(d) hereto (the "**IP Assets**"); and

AL

Patricia Mathis
7/1/24

(e) the goodwill associated with the Business and the foregoing Assets including Customer List and Contracts set forth in Schedule 1.1(e) hereto.

(f) the equipment and other tangible personal property of Seller that is set forth in Schedule 1.1(f) hereto

1.2. Excluded Assets. For greater certainty, and without limiting the foregoing, any assets of the Seller not identified in Section 1.1 will be excluded from the Assets, along with the following assets and properties of Seller set forth in subsections (a) through (d) of this Section (individually, an “**Excluded Asset**”, and collectively, the “**Excluded Assets**”):

(a) the rights of Seller under this Agreement, including the right to receive the purchase price, as described in Section 1.5;

(b) those assets listed or described on Schedule 1.2(b);

(c) all cash and accounts receivables and other rights to payments for services rendered, or products sold, by Seller prior to the Closing Date; and

(d) any assets not related to the Business.

1.3. Assumed Obligations. Upon the terms and provisions and subject to the conditions set forth in this Agreement, Buyer will assume at the Closing, and will thereafter timely pay, satisfy and otherwise discharge in accordance with their respective terms, to the complete exoneration of Seller, the liabilities and obligations of Seller occurring from and after the Closing Date under those contracts as specifically and expressly set forth on Schedule 1.3 (individually, an “**Assumed Obligation**” and collectively, the “**Assumed Obligations**”).

1.4. Liabilities Not Assumed by Buyer. Except as otherwise specifically and expressly set forth on Schedule 1.3, Buyer has not, and will not be deemed or construed to have, in any way assumed or taken title to the Assets subject to, or in any way become liable or responsible for, and Seller will indemnify and hold Buyer harmless from and against, any and all liens, indebtedness, losses, expenses and other liabilities and obligations, regardless of its or their nature or circumstances (each an “**Excluded Liability**,” and collectively, the “**Excluded Liabilities**”) relating to the Business that have not been specifically assumed by Buyer pursuant to Section 1.3, including but not limited to:

(a) liability for all Taxes (as hereinafter defined) and duties in all jurisdictions;

(b) liability which constitutes a breach of, or is inconsistent with, the representations, warranties and agreements of Seller set forth in this Agreement;

(c) liability of Seller for any expenses of the Seller incurred in negotiating, preparing or consummating the transactions contemplated by this Agreement;

(d) other liability of Seller not expressly assumed by Buyer pursuant to Section 1.3;

or

(e) all liability of Seller arising from operating the Business prior to the Closing Date, except to the extent specifically assumed by Buyer pursuant to Section 1.3.

AL  7/1/24

1.5. Purchase Price; Payment; Allocation of Purchase Price. Subject to the terms and conditions set forth in this Agreement, at the Closing:

- (a) Buyer will assume the Assumed Obligations in accordance with Section 1.3;
- (b) Buyer will pay to Seller **REDACTED** USD, as such amount is increased or decreased as provided by Section 1.5(b)(iii) below (the "Purchase Price"), payable in cash as follows:
 - (i) **REDACTED** USD, payable on the Closing Date, as such amount is increased or decreased as provided by Section 1.5(b)(iii) below (the "Cash Price"), by wire transfer of immediately available funds in accordance with the wire transfer instructions provided by Seller to Buyer and;
 - (ii) **REDACTED** USD to be held by Buyer for 365 days after Closing for any offsets or breach of this Agreement, including but not limited to breaches of representations and/or warrants made that induced the Buyer to act on this contract further identified in Schedule 2. However, in the event of any claim for such breach or offset the Buyer is in no way required to limit the extent of its claim to the amount of **REDACTED** USD.
 - (iii) The Purchase Price shall be decreased by the amount of prepaid support contracts or monthly services of Seller as of Closing that were prepaid by any customers for services to be rendered after Closing by the Buyer pursuant to Buyer's assumption of such obligations, as listed in Schedule 1.5(b)(iii).
 - (iv) Buyer and Seller agree that, due to the manner in which the services are rendered and invoiced by the business, that they anticipate that there may be instances where services were provided by Seller pre-closing but payment for such services are received by the Buyer or that payments for services provided by the Buyer post-closing may be paid to the Seller. To address such occurrences, Buyer and Seller agree to perform reviews of revenues post-closing in order to determine the proper recipient of any such payment as often as necessary, but at least once every two weeks, to ensure the proper allocation of revenues and for both parties to transfer any funds needed to the other party.
 - (v) Buyer and Seller agree that the Purchase Price will be allocated among the Assets for all purposes (including tax and financial accounting) in accordance with Schedule 1.5(c) hereto. Buyer and Seller agree that the values so attributed to the Assets shall be the respective fair market values thereof and Buyer and Seller shall file all tax returns (including amended returns and claims for refund) and elections required or desirable under applicable tax law in a manner consistent with such allocation.

1.6. Instruments of Conveyance. In order to effectuate the transfer of the Assets contemplated by Section 1.1, and thereafter upon reasonable request, Seller will execute and deliver, dated on or as of the Closing Date, all bills of sale and other documents, or instruments of assignment, transfer or conveyance as may be necessary or appropriate to vest in or confirm to Buyer good and marketable title to the Assets owned by Seller, in each case free and clear of all liens, and to the lawful rights of Seller to use those Assets not owned by Seller.

1.7. Employees of the Business. Parties acknowledge that Buyer will offer employees of Seller identified on Schedule 1.7 hereto an at-will employment agreement effective the Closing date. Prior to the Closing Date, Seller will assist Buyers in executing an employment agreement or appropriate engagement letter that terminates their employment or relationship with Seller and initiates their employment with Buyer on the Closing Date. It shall be a condition of Closing for Seller and Buyer that

AL
JMK
7/1/24

Victor Grinberg, Alex Litvak and Steve Lavelli (the "Key Employees") enter into employment relationships with the Buyer and resign their positions with Seller pursuant to separation agreements reasonably acceptable to the Sellers.

1.8. Closing.

(a) Closing Date. The purchase and sale of the Assets provided for in Section 1.1 (the "Closing") will be consummated as of the date of this Agreement (such date being herein referred to as the "Closing Date").

(b) Seller's Deliveries at Closing. On or before the Closing Date, Seller will deliver or cause to be delivered to Buyer the following:

(i) a copy of the resolutions of the members and managers of Seller authorizing the execution, delivery, and performance of this Agreement and all other agreements, instruments, certificates, and documents required to be executed and delivered hereunder to which Seller is a party, certified by an officer of Seller to be complete, correct, and in full force and effect as of the Closing Date; and

(ii) such other bills of sale, assumption agreements, instruments of assignment and other documents, as may be reasonably requested by Buyer to effect or evidence the transactions contemplated hereunder.

(c) Buyer's Deliveries at Closing. On or before the Closing Date, Buyer will deliver or cause to be delivered to Seller the following:

(i) a copy of the resolutions of the board of directors of Buyer authorizing the execution, delivery, and performance of this Agreement and all other agreements, instruments, certificates, and documents required to be executed and delivered hereunder to which Buyer is a party, certified by an officer of Buyer to be complete, correct, and in full force and effect as of the Closing Date; and

(ii) written confirmation from the Buyer and the Key Employees that they have entered into employment arrangements with the Buyer; and

(iii) the Purchase Price, in accordance with Section 1.5.

2. **Representations, Warranties and Covenants of Seller**

To induce Buyer to enter into this Agreement and the other documents listed hereunder to which it is a party (the "**Purchase Documents**") and to purchase the Assets and assume the Assumed Obligations, which it would not have done without Seller's representations and warranties provided herein, and except as described in the Disclosure Schedule attached hereto as Exhibit A (the "**Disclosure Schedule**"), Seller and Principals represent and warrants to Buyer as follows:

2.1. Organization, Powers, Etc. Seller: (a) is duly organized, validly existing and in good standing under the laws of the State of California; (b) has the power and authority to carry on the Business as now conducted and to own or hold under lease the assets and properties it purports to own or hold under lease; (c) is duly qualified, licensed or registered to transact the Business and, in good standing in every jurisdiction in which failure to be so qualified, licensed or registered would be reasonably likely to have a material adverse effect on it; and (d) has the power and authority to execute and deliver this

AL

Am
7/1/24

Agreement and each of the other Purchase Documents to which it is or will be a party and to perform all of its obligations hereunder and thereunder.

2.2. Authorization, Conflicts and Validity. The execution and delivery by Seller of this Agreement and each of the other Purchase Documents to which it is or will be a party and the performance by Seller of all of its obligations hereunder and thereunder:

- (a) have been duly authorized by all requisite corporate action, if applicable;
- (b) will not violate or be in conflict with any term or provision of (i) any applicable law, (ii) any judgment, order, writ, injunction, decree or consent of any court or other judicial authority applicable to Seller or (iii) the Certificate of Organization or Operating Agreement of Seller;
- (c) will not violate, be in conflict with, result in a breach of, constitute a default (with or without the giving of notice or the passage of time or both) or give rise to any right of termination, cancellation, modification or acceleration of any right or obligation of Seller, or to a loss of any material benefit relating to the Business to which Seller is entitled, under any term or provision of any material contract; and
- (d) will not result in the creation or imposition of any lien of any nature upon any of the Assets.

2.3. Enforceability. This Agreement is, and the other Purchase Documents to which Seller is or will be a party when executed and delivered, will be valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms and provisions.

2.4. Consents, Etc. No consent, approval or authorization of, or registration, declaration or filing with, any Person is required (i) as a condition precedent, concurrent or subsequent to or in connection with the due and valid execution, delivery and performance by Seller of this Agreement or any other Purchase Document to which Seller is or will be a party or (ii) as a condition to the legality, validity, binding effect, enforceability or accuracy of any of their respective representations, warranties, covenants and other terms and provisions hereof or of any Purchase Document, or (iii) to afford Buyer the benefits to be provided upon purchase of the Assets. As used herein "Person" will include (without limitation) any manner of association, business trust, company, corporation, estate, governmental or other authority, joint venture, limited liability company, natural person, partnership, trust or other entity.

2.5. Litigation. There are no actions, suits, investigations or proceedings pending or, to the knowledge of Seller, threatened at law, in equity, in arbitration or by or before any other authority involving or materially adversely affecting: (i) the Business, (ii) any part of any Asset (including the IP Assets) or Assumed Obligation, (iii) any of the obligations of Seller under this Agreement or any other Purchase Document, or (iv) any of the transactions contemplated in this Agreement and the other Purchase Documents. Seller is not in default with respect to any judgment, order, writ, injunction, decree or consent of any court or other judicial authority.

2.6. Compliance with Applicable Laws. Except as set forth on Schedule 2.6, Seller and the Business are in material compliance with all applicable laws. Seller has received no written notice claiming a violation by Seller or the Business of any applicable law relating to the Assets (including the IP Assets), the Business, and, to Seller's knowledge, there is no basis for any claim that such a violation exists.

2.7. Title to Assets, Encumbrances, Etc.

AL

mm
7/1/24

(a) Seller:

(i) has good, valid and marketable title to the Assets, free and clear of any and all liens of any kind whatsoever except as listed in Section 2.7(a)(i) of Exhibit A; and

(ii) has the lawful right to transfer its rights with respect to the Assets which are not owned by Seller, being those Assets listed in Section 2.7(a)(ii) of Exhibit A;

(iii) has caused the Assets to be maintained in accordance with good business practice, and the tangible Assets are in good operating condition and repair in all material respects and are suitable for the purposes for which they are used by Seller, in the ordinary course of the operation of the Business, in each case subject to regular wear and tear and the age of the tangible Assets;

(b) The Assets constitute all the material assets held for use or used in connection with the Business other than the Excluded Assets;

(c) The Assets include all rights and properties necessary to enable Buyer to carry on the Business after the Closing substantially in the same manner as it was conducted by Seller before the Closing; and

(d) No other Person owns any properties and assets which are being held for use or used in the Business except for those set forth in Section 2.7(a)(ii) of Exhibit A which are leased by Seller.

2.8. Intellectual Property.

(a) Except as set forth on Schedule 2.8, Seller owns or holds a license to all material Intellectual Property included in the Assets, and owns all Domain Names. No other Person has an ownership or other interest in the IP Assets or the Domain Names.

(b) Schedule 1.1(d) hereto sets forth a true and complete list and summary description of all registered and material unregistered Intellectual Property necessary for the conduct of the Business in the manner conducted by Seller as at the Closing Date, being the IP Assets.

(c) All IP Assets that are owned by Seller were entirely conceived, created, written, produced, developed and completed by (i) the employees of Seller within the course and scope of their duties while employed by Seller and who have a duty of assignment to Seller or (ii) by individuals who have assigned such IP Assets to Seller.

(d) Seller possesses all exclusive right, title and interest in and to all IP Assets, free and clear of any lien. Seller has not granted any Person, or obligated itself to grant to any Person, any license, option or other right in or with respect to any of the IP Assets except in the ordinary course of its Business for customers listed in Schedule 1.1(e). No Person has asserted to Seller that the use by Seller or the Business of the IP Assets is in breach of any rights of any other Person and, to Seller's knowledge, there is no basis for any claim or assertion that such a breach exists.

(e) There is no proceeding, petition to cancel, interference, re-examination or audit pending, or to Seller's knowledge, threatened, with respect to any presently existing factual basis that may result in any proceeding or formal audit with respect to, any of the following: (i) the IP Assets or (ii) any right of Seller to develop, license, use, sell, distribute, modify or otherwise exploit the IP Assets.

AL

Wm
7/1/24

(f) No Person is infringing upon, misappropriating or otherwise violating rights with respect to the IP Assets. No Person has made a written complaint, allegation, charge or assertion that any IP Assets are invalid, unenforceable, incomplete or defective in any other way and, to Seller's knowledge, there is no basis for any complaint, allegation, charge or any assertion whatsoever that any IP Assets are invalid, unenforceable, incomplete or defective in any material way.

(g) in the past eighteen (18) months, there has been no unauthorized access, use, intrusion, or breach of security, or failure, breakdown, performance reduction, or other adverse event affecting any systems of Seller, that has caused or could reasonably be expected to cause any: (i) substantial disruption of or interruption in or to the use of such systems or the conduct of the Business; (ii) loss, destruction, damage, or harm of or to Seller or its operations, personnel, property, or other assets as it relates to the Business; or (iii) liability of any kind to Seller as it relates to the Business.

(h) Seller has taken commercially reasonable actions, to protect the integrity and security of the Business' systems and the data, personal information and other information stored or processed thereon. Seller maintains commercially reasonable backup and data recovery.

2.9. Taxes.

(a) Except as set forth on Schedule 2.9, Seller has duly and timely filed all federal, state, provincial and local returns for Taxes related to the Business or the Assets required under applicable law to be filed by Seller (inclusive of applicable extensions). All Taxes shown on said filed tax returns as due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or loss could be added thereto for the nonpayment thereof. Seller has no liability for Taxes (including penalty or interest relating thereto) that relate to or affect the Assets or the Business other than those that have been paid by Seller or accrued for in Seller's financial statements. All Taxes that have been required to have been withheld with respect to all employees, consultants or independent contractors of the Business have been withheld and timely remitted to the applicable Tax authority.

(b) Seller is not a party to any action, suit or proceeding by any Governmental Authorities for the assessment or collection of Taxes related to the Business or the Assets, and there is no audit examination, deficiency or refund litigation or matter in controversy with respect to any Taxes related to the Business or the Assets. To the knowledge of Seller, no claim by any taxing department or authority is pending in any jurisdiction where Seller does not file tax returns to the effect that Seller is or may be subject to taxation by that jurisdiction related to the Business or the Assets.

(c) For the purposes of this Agreement, the following terms shall have the following respective meanings:

(i) "Tax" or, collectively, "Taxes" includes (a) any taxes, tariffs, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, all license and registration fees and all employment insurance, health insurance contributions and any other government pension plan premiums or contributions, and (b) any liability for the payment of any amounts of the type described in (a) as a result of any express or implied obligation to indemnify any other Person

or as a result of any obligations under any contract or arrangements with any other Person with respect to such amounts, including any liability for Taxes of a predecessor entity; and

(ii) **“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial, local, regional, municipal or of any other political jurisdiction, and any agency, authority, instrumentality, court, board, commission, bureau, arbitrator, arbitration tribunal or other tribunal, or any quasi-governmental or other entity, insofar as it exercises a legislative, judicial, regulatory, administrative, expropriation or taxing power or function of or pertaining to government, and includes any official of any of the foregoing.

2.10. Operation in the Normal Course of Business. Except as set forth on Schedule 2.10, Seller or Principals have not received written notice (including in electronic form) from any material customer or supplier to the effect that the business relations with such customer or supplier would be modified in any material and detrimental manner following the purchase by Buyer of the Assets contemplated by this Agreement.

2.11. Environmental Matters. Seller is in material compliance, and has heretofore operated its business, and used any real or immovable property, improvements or related assets owned, leased or operated by it, in material compliance with all terms and conditions of such required permits, licenses and authorizations and has not previously violated any of same in the last three years, and is also in compliance and has heretofore for the last three years operated its business and used any real or immovable property, improvements or related assets owned, leased or operated by it in material compliance with all environmental laws and any decrees, judgements, notices or demands made by any Governmental Authority in connection with environmental matters.

2.12. Accuracy of Books, Records and Schedules. Seller and Principals represent and warrant to Buyer that the information contained in all other Schedules attached hereto, is materially true, correct and accurate.

3. **Representations, Warranties and Covenants of Buyer**

To induce Seller to enter into this Agreement and the other Purchase Documents to which it is a party and to sell the Assets and assign the Assumed Obligations (if any) to Buyer, for which it would not have done without Buyer’s representations and warranties provided herein, Buyer represents and warrants to Seller as follows:

3.1. Organization, Powers, Etc. Buyer: (a) is duly organized, validly existing and in good standing under the laws of the State of Delaware; (b) has the power and authority to carry on its business as now conducted and to own or hold under lease the assets and properties it purports to own or hold under lease; (c) is duly qualified, licensed or registered to transact its business and in good standing in every jurisdiction in which failure to be so qualified, licensed or registered would be reasonably likely to have a material adverse effect on it; and (d) has the power and authority to execute and deliver this Agreement and each of the other Purchase Documents to which it is or will be a party and to perform all of its obligations hereunder and thereunder.

3.2. Authorization, Conflicts and Validity. The execution and delivery by Buyer of this Agreement and each of the other Purchase Documents to which it is or will be a party and the performance by Buyer of all of its obligations hereunder and thereunder: (a) have been duly authorized by all requisite corporate action; and (b) will not violate or be in conflict with any term or provision of (i) any applicable law, (ii) any judgment, order, writ, injunction, decree or consent of any court or other judicial authority applicable to Buyer, or (iii) the Articles of Incorporation or Bylaws of Buyer.

AL

mm
7/1/12

3.3. Enforceability. This Agreement is, and the other Purchase Documents to which Buyer is or will be a party when executed and delivered will be valid and binding obligations of Buyer, enforceable against it in accordance with their respective terms and provisions.

3.4. Consents, Etc. No consent, approval or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required as a condition precedent, concurrent or subsequent to or in connection with the due and valid execution, delivery and performance by Buyer of this Agreement or any other Purchase Document to which Buyer is or will be a party or the legality, validity, binding effect or enforceability of any of their respective representations, warranties, covenants and other terms and provisions.

3.5. Included Assets. All Assets needed to run the Business as currently operated by Seller are listed herein and if any Assets needed to run the Business are determined to be missing or excluded Seller agrees to provide to Buyer the missing Assets after Closing at no additional cost to Buyer.

4. **Indemnification**

4.1. Indemnification of Seller. After Closing, Buyer will defend, indemnify and hold Seller and the Principals harmless from and against:

(a) Any and all loss, damage or liability resulting to Seller by reason of (i) any Assumed Obligation, (ii) a breach of Buyer's representations or warranties contained in this Agreement and (iii) any default (whether in whole or in part) in the due or timely observance, performance or satisfaction of any covenant or other term or provision of this Agreement by Buyer; and

(b) Any and all costs, expenses and reasonable attorneys' fees in connection with these indemnifications and Seller and Principals' defense of any claims made against them.

4.2. Indemnification of Buyer. After Closing, Seller and Principals will defend, indemnify and hold Buyer harmless from and against:

(a) Any and all loss, damage or liability resulting to Buyer by reason of (i) any Excluded Liability, (ii) a breach of Seller's representations or warranties contained in this Agreement and (iii) any default (whether in whole or in part) in the due or timely observance, performance or satisfaction of any covenant or other term or provision of this Agreement applicable to Seller after Closing; and

(b) Any and all costs, expenses and reasonable attorneys' fees in connection with these indemnifications and Buyer's defense of any claims made against it.

(c) Seller and Principals shall have no liability to Buyer hereunder with respect to any breach of any representation, warranties or covenants set forth herein, if (i) prior to Closing Buyer obtains knowledge of a fact or circumstance, the existence of which would constitute a breach of such representation or warranty and Buyer nevertheless completes Closing.

4.3. Limitations on Indemnification.

(a) The representations and warranties of Seller and of Buyer contained in this Agreement or in any certificate, instrument or document delivered pursuant hereto shall survive the Closing until the 36-month anniversary of the Closing (such anniversary, the "**Survival Date**"); provided, however, (i) that in the case of the Surviving Representations (as hereinafter defined), the Surviving Representations shall survive the Closing up to each representative's applicable statute of limitation date

under Delaware law. Except in the case of Fraud, in which case the indemnification obligation of the party participating in the Fraud shall never expire, no party hereto shall have any indemnification obligation pursuant to this Agreement in respect of any representation or warranty (other than a Surviving Representation, in which case the indemnification obligation shall never expire) unless, before the Survival Date, it shall have received from the party seeking indemnification written notice of the existence of the claim for or in respect of which indemnification in respect of such representation or warranty is sought and the basis for such claim set forth in reasonable detail.

For the purposes hereof, “**Surviving Representations**” means the representations and warranties contained in Sections 2.1, 2.2, 2.3, 2.7, 2.9, 3.1, 3.2 and 3.3.

(b) Seller will have no obligation to pay any claims for indemnification with respect to the matters described in Section 4.2 (other than with respect to the Surviving Representations or the IP Representations) until the total of all such claims with respect to such matters exceeds an amount equal to USD [REDACTED] (the “**Deductible Amount**”). If the total of all such claims with respect to such matters exceeds the Deductible Amount, Buyer shall be entitled to seek indemnification for only those amounts in excess of the Deductible Amount. The aggregate liability of Seller and the Principals pursuant to Section 4.2 shall not exceed the Purchase Price (the “**General Cap**”); provided, however, that the General Cap shall not apply with respect to breaches of the Surviving Representations, taxes or government agency fees for services provided prior to closing or in the event of Fraud.

4.4. Exclusive Remedy. The rights of indemnity set forth in this Section 4 are the sole and exclusive remedy of each party in respect of any breach of this Agreement. This Section 4.5 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by a party of this Agreement or any other document to be delivered at Closing in accordance with the terms hereof. The provisions of this Section 4.5 shall not restrict the right of any party to seek injunctive remedies or specific performance.

4.5. Set-Off. Seller and Buyer acknowledge and agree that, without limiting the rights and remedies otherwise available to either party, a party may set-off against any amount owing by him, her or it, all amounts owing to the Indemnified Party under this Section 4.

5. Confidentiality, Non-Competition and Non-Solicitation

5.1. Definitions. For the purposes of this Section 5, the following terms shall have the following respective meanings:

(a) “**Affiliate**” of a Person means a second Person that controls, is controlled by or is under common control with, such first Person;

(b) “**Confidential Information**” “Confidential Information” means any information that is proprietary or unique to Buyer, Seller and or Principles (“Disclosing Party” or “Disclosing Parties”) and that is disclosed up to Closing, including the following: trade secret information; matters of a technical nature such as processes, devices, techniques, data and formulas, research subjects and results; marketing methods; plans and strategies; information about operations, products, services, revenues, expenses, profits, sales, key personnel, customers, suppliers, and pricing policies; and any information concerning the marketing and other business affairs, provided, however, that the phrase “**Confidential Information**” shall not include information that: (i) is in the public domain, without any fault or responsibility of any Receiving Party; (ii) is approved in writing by the Disclosing Party; or (iii) which a Receiving Party is required to disclose by law or any regulatory or government authority provided that the

AL

[Handwritten signature]
7/1/24

Receiving Party provides prompt notice of such requirement and permits the other Disclosing Parties to seek an appropriate remedy to prevent the disclosure, or alternatively, to agree to the terms of such disclosure;

(c) “**Restricted Business**” means the Business or any business that involves, or that is the same as, similar to, competitive with or related to the Business; and

(d) “**Territory**” means the areas within Canada and the United States of America where the Seller was doing business at any time prior to the closing date.

5.2. Confidentiality. All Receiving Parties acknowledge and agree that the Confidential Information of any Disclosing Party is extremely valuable, and must be kept confidential to protect the legitimate business interests of the Disclosing Parties. As such, unless otherwise required by law or expressly authorized in writing by the Disclosing Parties, during the Restricted Period, any Receiving Party shall not, directly or indirectly, in any capacity whatsoever, divulge, discuss, use, disclose or otherwise communicate to any person, or utilize for its personal benefit or for the benefit of any other, any Confidential Information of a Disclosing Party.

5.3. Non-Compete/Non-Solicit. For a period of two (2) years commencing on the Closing Date (the “**Restricted Period**”), Seller and the Principal (collectively, the “**Covenantors**”) shall not, and shall not permit any of their respective Affiliates to, directly or indirectly:

(a) engage in or assist others in engaging in the Restricted Business in the Territory unless selling services offered by the Buyer through its standard partner/agent agreement between the Seller and Buyer which is attached here as Exhibit B

(b) have an interest in any Person that engages directly or indirectly in the Restricted Business, anywhere in the Territory and in any capacity, including as a partner, shareholder, member, employee, principal, agent, contractor, trustee, consultant, investor or creditor; or

(c) cause, induce or encourage any actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of Seller and any Person that becomes a client or customer of the Business after the Closing and while the Principal is an employee of Buyer or its Affiliate), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship.

Notwithstanding the foregoing, (i) the Covenantors may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if each Covenantor is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own ^{RE} or more of any class of securities of such Person, and (ii) the Covenantors may engage in the Restricted Business for Buyer or its Affiliates.

5.4. Separate Covenants. Each subsection of Section 5.3 reflects a separate covenant and shall be separate from the other sections. If any section is ever deemed invalid by any court of competent jurisdiction, the remaining sections shall still be deemed valid.

5.5. Non-Solicit of Employees. During the Restricted Period, the Covenantors shall not, and shall not permit any of their respective Affiliates to, directly or indirectly, hire or solicit any person who is offered employment by Buyer or is or was, employed in the Business during the Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such

employees; provided, that nothing in this Section 5.5 shall prevent the Covenantors or any of their Affiliates from hiring (i) any employee whose employment has been terminated by Buyer or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

5.6. Scope. In the event that a court of competent jurisdiction should determine that any provisions of this Section 5 are broader than necessary to adequately protect the interests of Buyer, then it is the intention of the parties that such provisions be read down to such scope as the court should determine, such that Seller and the Principals remain bound thereby.

5.7. Acknowledgement. Seller and the Principals acknowledge that this Section 5 is reasonable and valid in the context of the sales contemplated in this Agreement and hereby irrevocably waive (and irrevocably agree not to raise) as a defense any issue of reasonableness in any proceeding to enforce any provision of this Agreement. In the case of the covenants provided by Seller and the Principals herein, Seller and the Principals specifically acknowledge the reasonableness and appropriateness of such time period and geographic area in light of the nature of the Business and the consideration paid to Seller pursuant to the transactions contemplated by this Agreement. Seller and the Principals further acknowledge that any violation of this Section 5 would result in irreparable injuries to Buyer and that money damages alone would be an inadequate remedy for any violation of this Section 5.

5.8. Injunctive Relief. Seller and the Principals acknowledge that in the event of a violation of any of these restrictions, Buyer shall be entitled to obtain from any Court of competent jurisdiction temporary, interlocutory and permanent injunctive relief which rights shall be cumulative and in addition to any other rights or remedies to which Buyer may be entitled without the need to deposit security, prove actual damages or establish the inadequacy of any of the other remedies available to it.

5.9. Restrictive Covenant. Seller and Buyer agree that no portion of the Purchase Price is allocated to a "restrictive covenant". Any "restrictive covenant" under this Agreement or any ancillary document is intended to maintain or preserve the value of the Assets to Buyer.

5.10. Benefit to the Principals. The Principals will derive a substantial economic benefit from the transactions contemplated by this Agreement and the Purchase Documents that they would not otherwise have received and is giving the covenants set forth in this Section 5 as consideration therefor, and acknowledges and agrees that Buyer would not have entered into this Agreement without the Principals having made such covenants.

6. General Provisions

6.1. Transfer Taxes. All transfer, sales, use, registration, documentary, stamp, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Purchase Documents, if any, shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any tax return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

6.2. Knowledge. For all purposes hereunder, "to the knowledge of Seller", "to Seller's knowledge", or words of like import shall mean to the actual knowledge of each of the Principals.

6.3. Preamble and Schedules. The schedules attached hereto are incorporated herein and the schedules and preamble shall form an integral part hereof as if recited herein at length.

6.4. Context. The words "he" or "him" shall read as "she" or "her" respectively (or vice versa), if the context so dictates and the word "it" shall be read as "he", "him", "she" or "her", if the context so dictates.

6.5. Currency. All references to monetary amounts in this Agreement and the Purchase Documents shall be deemed to be references to United States Dollar currency unless otherwise stipulated.

6.6. Expenses. Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated herein, including all fees and expenses of its respective counsel.

6.7. Publicity. All notices to third parties and all other publicity concerning the transactions contemplated by this Agreement will be planned by Buyer and previously approved in writing by Seller, which approval will not be unreasonably withheld.

6.8. Assignment. This Agreement may not be assigned to any third party by any act of the parties hereto or by operation of law without the prior express written approval of all of the parties hereto, which approval will not be unreasonably withheld.

6.9. Entire Agreement, Modifications and Waiver. This Agreement and the other documents contemplated hereby constitute the entire agreement between the parties pertaining to the subject matter contained in them and supersede all prior agreements, representations and understandings of the parties. No supplement, modifications, or amendment of this Agreement will be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement will be deemed, or will constitute a waiver of any other provision, whether or not similar, nor will any such waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6.10. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures of the parties transmitted by facsimile or PDF will be deemed to be their original signatures for all purposes.

6.11. All Agreements Survive Closing. All representations, warranties covenants and agreements of the parties contained in this Agreement, or any instrument or other writing provided for in it, will, survive Closing as provided herein and will inure to the benefit of and will bind the heirs, administrators, executors, successors, and assigns of the parties.

6.12. Severability. If any provision of this Agreement or the Purchase Documents is held by a court or arbitrator of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remainder of this Agreement or such Purchase Document will remain in full force and effect and will in no way be invalidated, void or voidable.

6.13. Applicable Law. The provisions of this agreement shall be governed by and interpreted in accordance with the laws of the state of Delaware as applicable, and shall be binding upon the parties herein, and upon their respective successors and assigns. For the purposes of all legal proceedings, this Agreement shall be deemed to have been performed in the state of Delaware.

6.14. Arbitration. Any dispute arising under this APA shall be submitted to binding arbitration in Wilmington, Delaware, subject to the rules and procedures of the American Arbitration Association.

AL

DM
7/1/21

6.15. Headings. Section and paragraph titles and headings herein contained are inserted only for convenience and are not intended to be construed as part of this Agreement or as a limitation on the scope of the particular portions of this Agreement to which they refer.

6.16. Succession. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

6.17. No Third Party Beneficiaries. Buyer and Seller do not intend by the execution, delivery or performance of this Agreement to confer a benefit upon any Person not a party to this Agreement.

6.18. Construction. Buyer and Seller have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement.

6.19. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and will be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the fifth business day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the next business day if sent by email and properly addressed as follows:

Seller: XCastLabs, Inc.
c/o Patricia Mathis
1880 Century Park East
Suite 612
Los Angeles, California 90067

Buyer: Clearly IP Inc.
3255 Highview Dr
Appleton, WI 54914
tlewis@clearlyip.com

Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

[Signatures Appear on Following Page]

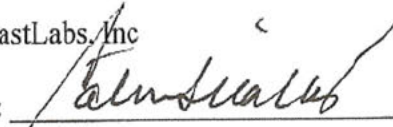
AL

Handwritten signature and date 7/1/24

IN WITNESS WHEREOF, the parties have caused this document to be executed as of the day and years first above written.

SELLER:

XCastLabs, Inc

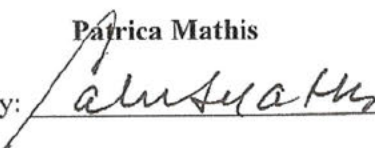
By: 

Name: Patricia Mathis

Title: Chair

PRINCIPALS:

Patrica Mathis

By: 

BUYER:

CLEARLY IP, INC

By: 

Name: Anthony Lewis

Title: Chief Executive Officer

AL



SCHEDULES AND EXHIBITS TO ASSET PURCHASE AGREEMENT

Schedule 1.1(a) - Intangible Assets

Schedule 1.1(b) - Suppliers

Schedule 1.1(c) - Domain Names

Schedule 1.1(d) - IP Assets

Schedule 1.1(e) - Customer List

Schedule 1.1(f) - Equipment List

Schedule 1.2(b) - Excluded Assets

Schedule 1.3 - Assumed Obligations

Schedule 1.5(b)(iii) - Prepaid Services

Schedule 1.5(c) - Purchase Price Allocation

Schedule 1.7 - Employee List

Exhibit A - Disclosure Schedule

Section 2.7(a)(i) of Exhibit A - Encumbrances

Section 2.7(a)(ii) of Exhibit A - Leased Assets

AL *[Signature]*
7/1/24

Schedule 1.1(a) - Intangible Assets

- All source code related to the software as defined in Schedule 1.1(d)
- Rights to use XCastLabs a ClearlyIP Company as a tradename.

AL
APM
7/1/24

Schedule 1.1(b) - Suppliers

- Underlying Carrier Vendors

REDACTED

- Connectivity

REDACTED

AL *mm*
11/1/24

Schedule 1.1(c) - Domain Names

Website Name	Description
XCastLabs Company Website https://xcastlabs.com/	Main company website featuring products, sales, and support information
Product videos https://www.xclproducts.com/	Product Videos: PBX, Sip Trunk, Contact Center New Feature Release Videos: Robocall Blocking, ACD Call Back, XCL Phone App for Android
Wholesale Customer Training & Resource website https://www.getstartedxcl.com	PRESENTATIONS: Managing Trouble Tickets Documents: IP Test Forms, 499-A Forms Info provided: FCC Compliance, Robocalling excerpt from Wholesale contract, Traffic Stat Guidelines, Tax exemption
Employee Resource website https://www.xclteam.com	PRESENTATIONS: Corporate Overview, Contact Center, Product Suite, Technology, Operations, Wholesale Service Overview, Agent Channel Program, Agent Finance Overview, White Label Reseller, Reseller Finance Overview, IBO Overview, How to Enter Order in IBO (Internal), Managing Trouble Tickets (Internal), How to Submit a Trouble Ticket Documents: Product Manuals, Disaster Recovery Policy & Procedure, Confidentiality Agreement, Employee Handbook, Employee Directory, ADP-401K Enrollment, Benefits Overview, W-4 Form, PTO Policy
Reseller Training https://www.xclresellertraining.com	Videos: Reseller presentation, Corporate Overview, Product Suite, Technology, Managing Trouble Tickets (Agent), How to Submit a Trouble Ticket-Agent, IBO Overview, How to Enter Order in IBO (Agent), Audio Quality problems, Can't make or receive calls, Preparing for Order Entry, Transferring calls. Documents: Useful Terms, LNP Guidelines for Resellers, Policy and Procedures for Handling Trouble Tickets, Troubleshooting

AL

Mm
7/1/24

	recommendations, IBO User Manual, IBO Overview, Audio Quality problems, Can't make or receive calls, Preparing for Order Entry, Provisioning your polycom, Transferring calls.
--	--

AL pm
7/1/24

Schedule 1.1(d) - IP Assets

HOSTED VOIP PLATFORMS

The hosted PBX and Residential VoIP platform is a proprietary system developed and owned in its entirety by XCastLabs. It is operated from the company's rented co-location spaces at Equinix, Chicago, IL, and at Crown Castle, Los Angeles, CA. The source code for SIP stack, SBC, media servers, dbprovider, and applications includes C++ code, PHP code, and database schemes. It is stored in a number of Git repositories on a Gitlab server in the XCast collocation space at Crown Castle Data Center, Los Angeles, CA.

ADDRESS TRUNKING VOIP PLATFORMS

The Address Trunking VoIP platform is a proprietary system developed and owned in its entirety by XCastLabs. It is operated from the company's rented co-location spaces at Equinix, Chicago, IL, and at Crown Castle, Los Angeles, CA. The source code for SIP stack, load balancing proxy, class 4 soft switch, and related applications includes C++ code, PHP code, and database schemes. It is stored in a number of Git repositories on a Gitlab server in the XCast collocation space at Crown Castle Data Center, Los Angeles, CA.

CONTROL PANELS

The web based Control panels (VCP and SWAdmin) used to configure the Hosted and Address Trunking platforms is a proprietary system developed and owned in its entirety by XCastLabs. It is operated from the company's rented co-location spaces at Equinix, Chicago, IL, and at Crown Castle, Los Angeles, CA. The source code is written in Java, PHP code, and database schemes. It is stored in a number of Git repositories on a Gitlab server in the XCast collocation space at Crown Castle Data Center, Los Angeles, CA.

AL
AM
7/1/24

AUTO PROVISIONING

The auto provisioning subsystem is used to configure devices for the Hosted platforms. It is a proprietary system developed and owned in its entirety by XCastLabs. It is operated from the company's rented co-location spaces at Equinix, Chicago, IL, and at Crown Castle, Los Angeles, CA. The source code is written in PHP code, Java, and database schemes. It is stored in a number of Git repositories on a Gitlab server in the XCast collocation space at Crown Castle Data Center, Los Angeles, CA.

INTEGRATED BACK OFFICE SYSTEM (IBO)

The IBO infrastructure is a proprietary system developed by and owned in its entirety by XCastLabs. It is operated from the company's office located in Fairfield, Iowa. The source code for IBO includes both ASP.Net C# code and SQL Server stored procedures and functions. It is stored in a Visual SourceSafe repository 1 on an XCast server in the collocation space at Equinix, Chicago, IL.

FREE USE OF FOUNDERS' PATENTS

Certain patents were developed and owned by original XCast founders which could still be utilized in some of the company's current operations. The founders granted free use (for the life of the patents) to XCastLabs and its assigns for any technology associated with claims expressed in:

- Direct client-to-client RTP exchanged in managed client-server network, **US 7,996,543 B2**
- Managing unified communication storage server from end user email reader **US 8,260,868 B2**
- Optimization for VoIP satellite customers **US 8,488,632 B2**
- Intelligent Outbound calling **US 8,553,868 B2**
- Detection of the type of NAT firewall using messaging **US 8,713,664 B2**
- Authenticating services of a service via a graphical user interface or telephone using the same user name or password; **US 9,479,336 B2**

AL

Am
7/1/24

- Software-based Operator Switchboard **US 9,258,420 B2**
- Family Branch Exchange **US 9,438,742 B2**
- Distinctive Ringing **US 9,055,141 B2**
- Prevention of Call loops for Wholesale VoIP Traffic Termination **US 9,942,407 B2**

AL

pm
7/1/24

Schedule 1.1(f) - Equipment

- Computers, Monitors, Phones, Printers and office furniture located in the LA, IL and IA offices that are included in Schedule 1.3 Assumed Obligations
- All Servers, Computers and Networking equipment located in the LA and Chicago Data Centers that are included in Schedule 1.3 Assumed Obligations

AL

Am
7/1/24

Schedule 1.2(b) - Excluded Assets

- None

AL
Am
7/1/24

Schedule 1.3 - Assumed Obligations

			Monthly	Annual	Contract Y/N	Termination Notice	Ongoing Need (# of months)	Purpose of this expense
Co-Lo and Office Space	Equinix, Inc.	Co-Lo, Chicago	\$ REDACTED	\$ REDACTED	Y	12/31/24 Auto Renews - 3 year Requires 60 day notice		Chicago Co-Lo
Co-Lo and Office Space	Crown Castle (formerly IX2, Wilcon)	Co-Lo, Los Angeles	\$ REDACTED	\$ REDACTED	N	MTM - 60 day notice		Los Angeles Co-Lo
Co-Lo and Office Space	MIU Gateridge	Office Space, Fairfield	\$ REDACTED	\$ REDACTED	N	MTM - 30 day notice		
Co-Lo and Office Space	J2M-191, LLC	Office Space, Northfield	\$ REDACTED	\$ REDACTED	Y	03/31/26		
Other Operating Expense Vendors	Experian	Credit Check Service						
Other COGS Vendors	Intermedia.net (formerly Telax)	Call Center Service for Resale to Reseller			N	30 day notice		Call Center Service Rebilled to Reseller Xcelerate Networks
Other COGS Vendors	Intrado Life & Safety	E911 Service Provider	\$ REDACTED	\$ REDACTED	Y	04/01/25 Auto Renews - 1 year		E911 Service for

AL

Am
7/1/2024

							Requires 30 day notice	customer seats
Other COGS Vendors	Ingram Micro Inc. (fka NetXUsa)	Equipme nt for Resale Provider			N			
Other COGS Vendors	prolenea	LRN database file services	\$ REDACTED	\$ REDACTED	Y	08/28/24	Auto Renews - 1 year Requires 30 day notice	LRN database file services
Other COGS Vendors	YouMail , Inc.	S/S Software License to block Robocall s	\$ REDACTED	\$ REDACTED	Y	09/08/24	Auto Renews - 1 year Requires 30 day notice	YouMail software license to block robocalls
Other COGS Vendors	Transacti on Network Services, Inc.	S/S TNS Call Guardian	\$ REDACTED	\$ REDACTED	N			S/S TNS Call Guardian

AL
 pm
 7/1/24

Schedule 1.5(b) iii - Prepaid Services

None

AL

mm
7/1/24

Schedule 1.5(c) - Purchase Price Allocation

The parties agree that, for U.S. Federal and applicable state and local income tax purposes, the fair market value of the Assets shall be determined consistent with the methodology and order described as follows:

<u>Asset</u>	<u>Order of Allocation of Purchase Price</u>
(a) Class I Assets - Cash	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>
(b) Class II Assets - actively traded personal property (such as U.S. government securities and publicly traded stock), certificates of deposit and foreign currency	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>
(c) Class III Assets - Accounts Receivable	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>
(d) Class IV Assets - Inventory	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>
(e) Class V Assets - all assets other than Class I, II, III, IV, VI and VII assets, including (without limitation) furniture, fixtures and real estate, software code	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>
(f) Class VI Assets	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>
(g) Goodwill	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> REDACTED </div>

AL

pm
7/1/04

Exhibit A - Disclosure Schedule

Section 2.7(a)(i) of Exhibit A – Encumbrances

The company, XCast Labs, has no encumbrances as of June 15, 2024.

Section 2.7(a)(ii) of Exhibit A – Leased Assets

As of June 15, 2024, the company, XCast Labs, has no assets under a leased agreement.

All assets are owned by the company as of June 15, 2024.

AL

RAM
7/1/24

REDACTED

REDACTED	

AL

Pom
7/1/24

REDACTED

REDACTED	

AL

pm
7/1/24

REDACTED

REDACTED	

AL

mm
7/1/24

REDACTED

REDACTED	

AL

pm
7/6/24

REDACTED

REDACTED	

AL

7/1/24

REDACTED

REDACTED	

AL

Done
7/1/24

