

AUCTION DATE
 Bids due prior to or on
 October 3, 2016
 12PM NOON PT



BIDDER #

To be completed by BRAUN representative

TWO TIERED

Sealed Bid Auction Offer

Please complete return to BraunWorldbid With Other Required Materials by no later than October 3, 2016, 12PM PT
 Fax to 310-798-8883 or email to Todd@braunco.com or mail to 1230 Rosecrans Avenue, Suite #160, Manhattan Beach, CA 90266.
 For more details please call Braun at 310-798-3123 ext. 228

BID AMOUNT	\$ _____
BUYER'S PREMIUM (6%)	\$ _____
TOTAL PURCHASE PRICE	\$ _____
REGISTRATION DEPOSIT	\$ 200,000
ADDITIONAL DEPOSIT TO BE PROVIDED UPON SUBMISSION OF HIGHEST/BEST BID TO EQUAL 10% OF PURCHASE PRICE	\$ _____
Registration Deposit provided to Braun with this offer	_____ denote method of payment (wire or Cashier's check payable to Fidelity Escrow & Title
BUYERS BROKER NAME & LICENSE NUMBER (IF ANY)	_____
BROKER SIGNATURE	_____
DATE	_____
BUYER NAME	_____
BUYER SIGNATURE	_____
DATE	_____
BUYER ADDRESS	_____
BUYER PHONE NUMBER	_____
BUYER EMAIL ADDRESS	_____
UPON COMPLETION FORWARD TO:	____ Email to Todd@Braunco.com ____ fax to 310-798-8883

TERMS AND CONDITIONS OF THE AUCTION

The following sets forth the Terms and Conditions which govern the bid auction process ("**Auction**") with respect to certain real and personal property (individually and collectively, the "**Property**") being sold by Helen R. Frazer, in her sole and limited capacity as Chapter 7 Bankruptcy Trustee (the "**Trustee**" or "**Seller**") for Mark Technologies Corporation, a California corporation ("**MTC**" or "**Debtor**"). Trustee is the trustee in the Chapter 7 Case No. 6:16-bk-12192 WJ (the "**Case**") pending in the United States Bankruptcy Court, Central District of California, Riverside Division (the "**Bankruptcy Court**") and is acting pursuant to the authority granted to the Trustee under Chapter 7 of Title 11 of the United States Code, as may be amended from time to time (the "**Bankruptcy Code**"). Any prospective bidders interested in participating in this auction (individually, a "**Bidder**" and collectively, "**Bidders**") agree as a condition of such participation to comply with all of the terms and conditions as more fully set forth herein (the "**Terms and Conditions**").

1. **BRAUN:** The Trustee has engaged Braun WorldBid Auction Platform ("**BRAUN**" or "**Auctioneer**") to act on its behalf to market and solicit interest in and provide information to Bidders concerning the sale of the Property. BRAUN is acting exclusively for the Seller of the Property as its Broker. You can obtain information about BRAUN online at www.braunco.com or by contacting Todd ~~Wahl, Partner and Senior Vice President~~ Wohl, via fax (310-798-8883), via email at Todd@braunco.com or at 310-798-3123 ext. 228.

2. AUCTION PROCESS:

A. **Two-Step Bid Process:** The Auction will be conducted in a "two-stage" process:

1) **Initial Qualifying Sealed Bid:** Bidders will be required to submit their Bid Packages (as further discussed below) no later than 12:00 p.m., Pacific Time, October 3, 2016 (the "**Initial Deadline**"). ~~All bids will be sealed, and reviewed by the Trustee and BRAUN for compliance with the terms hereof.~~ Subject to the terms and conditions hereof, prospective Bidders are not considered eligible to bid at the Auction until BRAUN receives the Bid Package (as set forth below). The Trustee may follow-up with any Bidder to clarify any questions the Trustee may have in evaluating an initial bid. The Trustee shall ~~identify~~ select those Bidders who are identified by the Trustee as one of the top bids submitted, and advise said Bidders that they have qualified for the highest and best round follow-up bid by no later than 5:00 p.m., Pacific Time, October 4, 2016 with written notice to said Bidders who have qualified for the follow-up round.

2) **Highest/Best Follow-Up Sealed Bid:** Bidders who received the Trustee's notice of their qualification for the follow-up round shall be required to submit a sealed bid representing their highest and best bid by no later than 12:00 p.m., Pacific Time, October 6, 2016 (the "**Follow-Up Deadline**"). This highest and best bid may require the Bidder to submit additional documentation, materials and/or information as reasonably requested by Trustee, as well as an additional amount to its initial deposit such that its deposit (in total) equals at least 10% of the purchase price. To the extent that a Bidder fails to submit a follow-up bid or comply with any additional requirements relating to its follow-up bid, the initial bid submitted will represent the final bid submitted by said Bidder. Subject to the qualifications set forth below, the Trustee anticipates that she will provide all Bidders with notice of the winning Bidder (the "**Successful Bidder**") **by no later than 5:00 p.m., Pacific Time, October 7, 2016.**

3) **Return of Deposits:** The Trustee anticipates returning all deposits other than the deposit of the Successful Bidder (unless a Qualified Bidder elects to be designated as a back-up Bidder, the result of which is that, if the Successful Bidder fails to close the transaction as set forth in the APA, the Trustee may, in its good faith discretion, sell the Property to the designated back-up Bidder pursuant to the terms and conditions of the APA so provided—to the extent that a Qualified Bidder agrees to be a back-up bidder, its deposit will also be retained, and either returned upon the sale of the Property to the Successful Bidder, or applied to the Purchase Price (as set forth in its APA) pursuant to the terms and conditions of the APA submitted by such back-up Bidder.

4) **Sale Order and Closing:** The Trustee anticipates setting a hearing for October 25, 2016 to confirm the sale of the Property to the Successful Bidder (and/or the back-up Bidder, as applicable), and seek to have the Court approve the sale and enter an appropriate order at the earliest opportunity. Following entry of said sale order, the Trustee and the Successful Bidder shall proceed to promptly close the sale of the Property pursuant to the terms of the APA submitted by said Successful Bidder.

B. Disclosure of BRAUN'S Representation. BRAUN discloses that it represents the Trustee; BRAUN is not acting as a broker for any Bidder.

C. Consent. All persons participating in the Auction are consenting to any recording, audio or visual, of the Auction and its related activities by the Trustee and/or BRAUN or persons or entities acting on its and their behalf. Consent is further given to the dissemination or public broadcast by the Trustee and/or BRAUN and any other person or entity acting on its and their behalf of such recording including use of the image or likeness of any such participant. This consent further extends to the dissemination of any information concerning or pertaining to Property, bids, purchases or other activities or functions at the Auction including but not limited to the interaction of prospective Bidders online with the BRAUN website.

D. Qualifications. It is important to note that (x) each of the Trustee and BRAUN expressly reserves the right to suspend, cancel, continue or modify in any manner the Auction or any part thereof and these Terms and Conditions, including, without limitation, extending any deadline or modifying the requirements of these Terms and Conditions, (y) all determinations shall be made by the Trustee in its sole and absolute discretion, and (z) the Auction and the designation of the Successful Bidder shall be subject to the approval of the Bankruptcy Court. In addition, in the unlikely event that Seller does not honor any bid or fails to convey title in accordance with the Successful Bidder's APA, BRAUN will not be held responsible or liable in any way.

E. How to Bid/Qualify:

1) **Submission of Bid Package at Initial Deadline:** Each Bidder that desires to make a bid should deliver by mail, hand deliver or via facsimile a written copy of its Bid Package such that the bids are received by the Trustee and its counsel prior to the Initial Deadline. ~~Only~~ potential Bidders that have submitted their bid materials prior to the Initial Deadline shall be permitted to participate in the Auction. A Bidder's Bid Package shall include the following (the "**Bid Package**"):

- a. A fully initialed and signed copy of these Terms and Conditions;
- b. A cashier's check in immediately available funds, in the amount of \$200,000 (the "**Registration Deposit**") drawn on or from a United States-based bank made payable to Fidelity Title Company ("**Escrow Broker**" or "**Escrow Holder**") or a wire transfer to Escrow Holder's account (please contact BRAUN for wire instructions);
- c. An asset purchase agreement substantially in the form attached hereto as **Exhibit A** (the "**APA**"), duly signed by Bidder on behalf of buyer where indicated therein, and at a purchase price as more fully set forth therein and discussed below;
- d. Documentation and materials evidencing sufficient proof of liquid funds to close the transaction contemplated in the APA; and
- e. Such other documentation and materials as may reasonably be required or as requested by BRAUN or Trustee evidencing such Bidder's ability to consummate the transaction as contemplated in the APA.

The Trustee expressly reserves the right to modify in any manner the materials and documentation required in connection with a Bidder's Bid Package.

2) **Submission of Additional Materials and Deposit With Highest/Best Follow-Up Sealed Bid At Final Deadline.** Bidders who received the Trustee's notice of their qualification for the follow-up round shall be required to submit by the Final Deadline, in addition to their highest and best bid (and subject to the terms and conditions set forth above): (a) such additional documentation, materials and/or information as reasonably requested by Trustee, and, (b) to the extent required, an additional amount towards the deposit such that the deposit (in total) equals at least 10% of the purchase price.

3) **Determination of Purchase Price:** The purchase price set forth in the APA represents the amount of a Bidder's bid, plus an additional six percent (6%) of the bid price, which 6% shall be applied to and used to pay the brokers at the Closing. The Purchase Price shall be paid to Seller pursuant to the terms and conditions set forth in the APA. All deposits submitted by Bidder shall be held by Escrow Holder, and may be returned to Bidder or retained by Escrow Holder and applied to the Purchase Price or otherwise paid to Seller pursuant to the terms and conditions of the APA.

4) **APA Terms and Conditions Are Binding:** All Bid Packages and other documentation and materials submitted by a Bidder shall be held by the Trustee pursuant to the terms and conditions of these Terms and Conditions and the APA.

F. Qualified Bidder Acknowledgments. A Bidder who properly and timely submits its Bid Package and otherwise complies with the terms and conditions hereof (a "**Qualified Bidder**"), among other things, expressly acknowledges and agrees that:

1) Trustee shall not be liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property or the operation thereof, furnished by any real estate broker, agent, employee, contractor, or other person, except and only to the extent as set forth in the APA;

2) The information provided by BRAUN regarding the Property was provided to the Trustee by MTC and other third parties, and that neither BRAUN nor the Trustee (including, without limitation, her agents and representatives) have made any representation or warranty of whatsoever kind and nature whatsoever other than as expressly set forth in the APA, including, by way of illustration and not of limitation, any representation or warranty as to (a) the accuracy or completeness of any information furnished, provided or otherwise available concerning the Property, (b) the condition, suitability or value associated with the Property, whether for its intended use or otherwise, and/or (c) actual or potential tax benefits, if any, associated with this Property. By submitting the Bid Package, the Qualified Bidder is representing that he/she or it has completed all due diligence with regard to the purchase of the Property;

3) It is acquiring the Property "AS-IS" and accepts the Property and the improvements thereon in their present condition, and that it has elected to proceed with the contemplated transaction regardless of whether it has actually inspected the Property and notwithstanding any information that the Buyer may have learned about the Property and its condition. Without limiting the generality of the foregoing, each Bidder expressly acknowledges and agrees that the Trustee has no obligation whatsoever to repair and maintain the Property and/or the improvements thereon;

4) The Trustee, BRAUN, and all parties acting on their behalf shall not be liable for any losses, damages, expenses, injuries or claims of any kind or character, including attorneys' fees, to any Bidder and any other person or entity, whether claiming rights on behalf of or based on their relationship with the Buyer or otherwise, arising from, caused by or relating to the Property or information related to the foregoing that have been set forth, omitted or inaccurately stated by or on behalf of Seller or BRAUN or on any online website display or marketing materials for the Property, including but not limited to the Property information and the information on the BRAUN website, or on any multiple listing service brochures, materials or information notwithstanding the fault of any Indemnities including, without limitation, the active or passive negligence of the Seller or any other Indemnities;

5) The Trustee is relying on the terms and conditions contained herein and in the APA, as well as the other documentation provided by Bidder. A Bidder who submits with its Bid Package an executed APA will have no right to rescind or cancel the APA for the purchase of the Property, whether based on facts or conditions discovered about the Property or otherwise, except and only to the extent as set forth in the APA.

3. DUE DILIGENCE:

A. Registration With BRAUN. Potential Bidders are required to register with BRAUN prior to reviewing the Property Information (including accessing the virtual data room operated by BRAUN) via (www.braunco.com). Certain financial data and contractual documents obtained from are available in the virtual data room. This information was provided to the Trustee by MTC and is subject to the qualifications noted herein. Prospective Bidders should also contact BRAUN to arrange to inspect the Property. BRAUN encourages all Bidders to inspect the Property and review the Property Information with their independent financial advisor. All inspections and due diligence shall be subject to these Terms and Conditions and the terms and conditions as may be set forth in the APA.

B. Independent Review of Property Information and Other Documentation. Braun will be available to answer questions regarding the Property information as well as other questions concerning the Auction and the acquisition process. The foregoing notwithstanding, potential Bidders should independently verify any information being relied upon (whether material or immaterial) in making their decision to submit the Bid Package and purchase the Property. As noted earlier, neither BRAUN, the Trustee, nor any professionals or representatives of the Trustee or Seller shall be liable for the accuracy, errors, or omissions of any and all documents provided. Access to a data room with the Due Diligence Materials will be provided following execution of a Non-Disclosure Agreement ("NDA"). Interested parties should Contact Braun for the NDA and access information.

Buyer shall be solely responsible for all obligations, contractual and otherwise, concerning or arising out or in connection with the Property-Property and the generation of power thereon.

[JMP\ 2559966.4](#)
[2559966.5](#)

Bidder's initials _____

B. Preliminary Title Report. The Preliminary Title Report (the "PTR") is available in the Data Room . Please be advised that the condition of title of the Property, whether found in the PTR as a matter of record or not of record, or which might be revealed by a survey or inspection of the Property will not be a contingency or condition for the completion of the purchase of the Property after the Buyer's execution and delivery of the APA as set forth herein and therein.

C. Physical Inspection of the Property. Due to safety considerations, prospective Bidders may inspect the Property only during ~~open house dates prior to the Auction~~ scheduled showing, and subject to any further qualifications, conditions or requirements as may be imposed from time to time by the Trustee. Each prospective Bidder is also encouraged to utilize the services of their own real estate broker, attorneys, accountants, advisors and contractors in connection with their evaluation of the Property and its condition. No bidder is authorized to visit the Property except as set forth herein. Prospective bidders shall not contact Southern California Edison

~~D.~~
4. MISCELLANEOUS

A. Independent Counsel. The undersigned acknowledges that it has been advised to seek the advice of independent legal counsel in connection with the contemplated acquisition of the Property, and that it has had sufficient time to discuss the contemplated transaction terms and conditions as set forth herein and in the APA, along with other documentation in connection herewith and therewith with independent legal counsel and advisors, and that it has either engaged such legal counsel and/or advisors to assist in connection with its review and consideration of the contemplated transaction and the terms and conditions hereof and of the APA, or have expressly waived any and all of its rights with respect to the use of such legal counsel and/or advisors.

B. Knowing Authorization. By executing and delivering this Terms and Conditions, the undersigned has expressly advised BRAUN and the Trustee that it understands the contemplated transaction, including, without limitation, the terms and conditions hereof and of the APA, as well as the implications of its consent, and voluntarily and knowingly enters into and delivers this Terms and Conditions and, to the extent applicable, the Bid Package and related materials, and consents to the terms and conditions of this Terms and Conditions and the APA, as applicable. Furthermore, the undersigned acknowledges that it is basing its decision with respect to such consent solely with respect to its own due diligence and is not and will not rely on any representations, warranties, covenants, arrangements or agreements of whatsoever kind and nature except as otherwise expressly set forth in the APA. Furthermore, the undersigned expressly represents and warrants that the person signing this Terms and Conditions is duly authorized to execute and deliver this Terms and Conditions on behalf of the undersigned, and that, upon its execution and delivery of this Terms and Conditions (as well as the Bid Package materials) to BRAUN and/or the Trustee, this Terms and Conditions, the APA (as applicable) and such other documents, instruments, certificates and agreements delivered to BRAUN and/or the Trustee, as applicable, shall be valid and binding upon the undersigned, subject to the terms and conditions contained herein and therein.

C. Governing Law/Jurisdiction. This Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State California and the Bankruptcy Code. The Bankruptcy Court shall retain exclusive jurisdiction with respect to this Terms and Conditions, the Bid Package materials, and the transactions contained herein and therein.

D. Complete Agreement/No Presumption. This Terms and Conditions, as expressly qualified by the APA and other Bid Package materials, represents the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior or contemporaneous negotiations, documentation or agreements between and among the parties. For purposes of construction, this Terms and Conditions shall not be construed against BRAUN and/or the Trustee. In the event of a conflict between the terms and conditions hereof and the terms and conditions of the APA, the terms and conditions of the APA shall control.

[BIDDER ACKNOWLEDGMENT IMMEDIATELY FOLLOWING]

BIDDER ACKNOWLEDGEMENT

I/We HAVE RECEIVED, READ, UNDERSTOOD AND ACCEPTED the Terms and Conditions for the Auction which are also available for review and download from www.BraunWorldbid.com

_____ INITIAL _____ INITIAL

I/We UNDERSTAND AND AGREE that this property is being sold "As Is" and without any warranties, express or implied, and that it is my/our sole responsibility to inspect the property and any applicable conditions prior to the auction.

_____ INITIAL _____ INITIAL

I/We HAVE AUTHORIZED my/our lender to disclose my/our proof of funds status to the Seller, its Brokers and/or Assigns.

_____ INITIAL _____ INITIAL

I/We HAVE DELIVERED to BRAUN this document.

_____ INITIAL _____ INITIAL

Bidder's signature _____ Date _____

Co-Bidder's signature _____ Date _____

For office use only:

Date received _____ Pre-Qual _____ Cashier's Check _____ Personal Check _____ Bidder # _____

EXHIBIT A
Form of Asset Purchase Agreement
(see attached)

DRAFT