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**ASSET PURCHASE AGREEMENT**

**by and among**

**BUYER CORPORATION,**

**as Buyer,**

**SELLER CORPORATION,**

**as Seller and**

**George Washington,**

**as Shareholder**

LAWYER'S MENTOR

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of this \_\_\_\_ day of February, 201\_ (the "Agreement") by and among **BUYER CORPORATION**, a STATE corporation ("Buyer"), **SELLER CORPORATION**, a STATE corporation ("Seller") and **GEORGE WASHINGTON**, the sole shareholder of Seller (the "Shareholder").

### WITNESSETH:

WHEREAS, Seller is engaged in, among other things, the business (the "Business") of marketing, distributing and selling an internet-accessible curriculum and learning software product named "\_\_\_\_\_"; and

WHEREAS, Seller desires to sell certain assets used in the Business to Buyer, and Buyer desires to acquire such assets in exchange for the consideration set forth herein,

NOW, THEREFORE, in consideration of the premises, representations, warranties, mutual covenants and agreements hereinafter set forth, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows.

Capitalized terms have the meaning assigned thereto in Article IX of this Agreement.

### ARTICLE I

#### PURCHASE AND SALE OF ASSETS

**Section 1.1 Purchase and Sale of Assets** At the Closing, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall acquire from Seller, all of Seller's right, title and interest in and to the following tangible and intangible assets, as they relate to the Product and exist as of the Closing, together with all accrued benefits and rights pertaining thereto (together, the "Assets"), other than the Excluded Assets, free and clear of any Encumbrances, except for Permitted Encumbrances:

(a) Product. Seller's internet-accessible curriculum and learning software "\_\_\_\_\_" and all plug-ins, content and documentation used in connection therewith (the "Product");

(b) Inventory. The work-in-process, software products (including, without limitation, all related tools, in source code, object code and executable code, and all documentation related thereto, supplies and similar items) and other inventories in each case intended for use or sale by the Business, including all such material related to the Product, in each case wherever the same may be located (the "Inventory");

(c) Personal Property. The computer hardware and other tangible personal property used exclusively or primarily in connection with the Business, as set forth on Section 1.1(c) of the Disclosure Schedule (the "Equipment");

(d) Intellectual Property. All Patents, Trademarks, Copyrights and other U.S. and foreign intellectual property, proprietary rights, and the goodwill pertaining to the foregoing, related to or used in connection with the Business, including without limitation: (i) trade secrets, customer and supplier lists, data, accounts and records and other confidential information, data and know-how, including all technical, manufacturing and engineering information, techniques, processes, software, source code, object code, web content, user manuals, new developments, inventions, designs, schematics, assembly drawings and documentation thereof to encompass related papers, parts, drawings, sketches, prototypes, formulae, diaries, notebooks, specifications, discs and tapes and all data contained therein and thereon or related to any of the foregoing, whether or not patented, patentable or reduced to practice; (ii) photographs, artwork, marketing plans, advertising materials, and other pertinent data and documentation; (iii) all right, title and interest of Seller in and to any and all names used in connection with the Product, including without limitation the name “\_\_\_\_\_” and derivations or translations thereof and logos and URLs related thereto; (iv) all rights to obtain renewals, extensions, continuations, continuations-in-part, reissues, divisions or similar legal protections related thereto; (v) all applications, certificates, files, recordings, licenses, and registrations and other agreements for all of the foregoing; (vi) all Internet addresses, domain names, web sites and other addresses used exclusively in connection with the Product; (vii) all licenses, sub-licenses, consent-to-use agreements and other agreements with third parties to use any of the foregoing; and (viii) the right to sue at law or in equity for any infringement or other impairment of the foregoing, including the right to collect damages and proceeds therefrom (collectively, the “Intellectual Property”), including all copies of the Intellectual Property whether in tangible, intangible or electronic format;

(e) Contracts. Subject to Section 5.5, all rights under those Contracts listed in Section 1.1(e) of the Disclosure Schedule (the “Assumed Contracts”);

(f) Books and Records. To the extent not already included in Intellectual Property, all books and records related to or used in connection with the Business, including, without limitation, (i) all records and lists of Seller pertaining to the Assets and the Assumed Liabilities, (ii) all product, business and marketing plans, advertising and sales literature and promotional literature relating to the Business, and (iii) all other books, ledgers, files, reports, plans, drawings and operating records, manuals and reports, testing manuals, notes and reports, drawings and models and treatises and other publications of every kind maintained by Seller in connection with the Product and the Equipment, but excluding the originals of Seller’s minute books, stock books, accounting books and records and tax returns (collectively, the “Books and Records”); *provided, however*, that Seller may retain and use copies of the Books and Records to the extent that the Books and Records relate to any Excluded Asset or Retained Liability; and

(g) Warranties. All rights under or pursuant to all warranties, representations and guarantees made by Persons (including all contractual or other rights of Seller to return Inventory) in connection with the Assets or services furnished to Seller pertaining to the Business or affecting the Assets.

**Section 1.2 Excluded Assets.** Notwithstanding anything contained herein to the contrary, the Assets shall not include, and Seller shall not transfer to Buyer and Buyer shall not accept, any of the following (collectively, the “Excluded Assets”):

- (a) Cash, cash equivalents and accounts receivable;
- (b) Books of original financial entry and internal accounting documents and records relating to the Business, original minute books and any other books and records relating to the Business that Seller is required to retain pursuant to statute, rule or regulation, *provided*, that Seller shall provide Buyer with copies of such books and records as Buyer may reasonably request from time to time;
- (c) Any assets or reserves of employee benefit plans;
- (d) Any real estate of Seller or any rights under any lease for any real estate of Seller;
- (e) All rights to refunds of all federal, state, local, foreign and provincial income, capital gains, gross receipts, profits, property, transfer, sales, mercantile, value added, capital stock, franchise or other taxes, including estimated taxes relating thereto and any interest and penalties imposed thereon (collectively, “Taxes”) relating to the Assets or the Business to the extent such Taxes relate to a period commencing and ending prior to the Closing and were not paid by Buyer;
- (f) All amounts prepaid on any insurance policy and any rights to recoveries under any insurance policy maintained by Seller on behalf of the Business prior to Closing;
- (g) Subject to the license granted in Section 5.10 below, the Current D3 Standards Engine;
- (h) All refunds, credits and deposits arising prior to the Closing from any utilities, vendors, customers and government offices in connection with the Business;
- (i) All telephone and fax numbers used in connection with the Business;
- (j) The CD ROM, books and other Internet products of Seller set forth on Schedule 1.2, and the Patents, Trademarks and Copyrights set forth on Schedule \_\_\_ relating to such products;
- (k) All rights, causes of action and claims that may be asserted against third parties arising out of any of the Excluded Assets described in paragraphs (a) through (i) hereof or any of the Retained Liabilities, including, without limitation, any rights to reimbursement for damages, fees or expenses; and
- (l) All rights of Seller arising out of or relating to this Agreement and the transactions described herein.

## ARTICLE II

### ASSIGNMENT AND ASSUMPTION OF LIABILITIES

**Section 2.1 Assumed Liabilities and Obligations.** At the Closing, Seller shall assign to Buyer, and Buyer shall assume and agree to pay, satisfy, perform and discharge the obligations and liabilities of Seller arising from and after the Closing under the Assumed Contracts (the “Assumed Liabilities”).

**Section 2.2 Retained Liabilities and Obligations.** Except for the Assumed Liabilities, Seller shall not assign to Buyer, and Buyer shall not assume, any Liabilities of Seller, or any of the costs, expenses, claims, losses or other obligations and liabilities related thereto, whether or not such Liabilities arise out of or relate to the Business or the Assets or relate to or arise out of any circumstances, events or actions occurring prior to, at or after the Closing Date, whether known or unknown, accrued, absolute, matured or unmatured, liquidated or unliquidated, contingent, actual or otherwise (together, the “Retained Liabilities”).

## ARTICLE III

### PURCHASE PRICE

**Section 3.1 Purchase Price.** The purchase price for the Assets will be the sum of (i) US \$\_\_\_\_\_ plus (ii) the Earn-Out Payment, if any (the “Purchase Price”). On the Closing Date, Buyer shall deliver US \$\_\_\_\_\_ in cash (the “Closing Payment”) to Seller via wire transfer of immediately available funds to an account designated by Seller in writing to Buyer.

**Section 3.2 Earn-Out.**

(a) **Earn-out Calculation.** If the Net New Sales of the Product during the fiscal year ending December 31, 201\_, equals or exceeds US \$3,000,000, Buyer shall pay Seller an amount equal to US \$\_\_\_\_\_ (the “Earn-Out Payment”). For purposes of this Agreement “Net New Sales of the Product” shall mean the total sales of the Product or derivations thereof as reflected on Buyer’s books and records (net of any returns, customer discounts or rebates, or warranty replacements) to customers who had not, prior to January 1, 201\_, purchased the Product. On or before March 31, 201\_, Buyer shall prepare and deliver to Seller a statement (the “Earn-Out Statement”) showing the calculation of the Net New Sales of the Product, along with the Earn-Out Payment, if any is due.

(b) **Audit; Disputes.** Seller (or a representative designated by Seller) shall have the right exercisable by written notice to Buyer within 30 days of receipt of the Earn-Out Statement, to make independent examinations or audits of Buyer’s books, records and accounts which pertain to or show Net New Sales of the Product. Such audits shall be limited to the determination of the Net New Sales of the Product as defined herein and shall be conducted at Buyer’s office during normal business hours and after reasonable prior notice. If, upon such examination or audit, Seller believes that there has been an improper failure to make the Earn-Out Payment, Seller shall notify Buyer in writing of its dispute within such 30-day period,

specifying in reasonable detail all disputed items (a “Dispute Notice”). Buyer and Seller shall use their best efforts to resolve such dispute. In the event that Buyer and Seller resolve such dispute within 30 days after Buyer’s receipt of the Dispute Notice, then the Earn-Out Statement shall be modified accordingly and Buyer shall promptly pay Seller the Earn-Out Payment, if due. In the event that Buyer and Seller are unable to resolve such dispute during such 30-day period, then Buyer and Sellers shall jointly select a nationally recognized accounting firm to serve as arbitrator of the dispute (the “Arbitrator”). The Arbitrator shall be engaged to review the Earn-Out Statement, the Dispute Notice and the work papers of each party used in connection with the preparation of the Earn-Out Statement and the Dispute Notice. The decision of the Arbitrator as to any modifications to those items in dispute, if any, that should be made to the Earn-Out Statement shall be final and binding upon the parties and, upon such decision, Buyer shall promptly pay Seller the Earn-Out Payment, if due. Judgment upon the decision of the Arbitrator may be entered by Buyer or Seller in any court of competent jurisdiction. The fees and expenses of the Arbitrator shall be shared equally by Buyer and Seller. Any information gained from statements as herein provided or any examination or audit shall be confidential and shall not be disclosed except to carry out the purposes hereof.

(c) Subsequent Sale of the Business. In the event that Buyer sells the Business, or substantially all of the assets of the Business, prior to March 31, 201\_, Buyer shall require that the purchaser of the Business assume the obligations of Buyer contained in this Section 3.2.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**Section 4.1 Representations and Warranties of Seller and the Shareholder.** Seller and the Shareholder, jointly and severally, represent and warrant to Buyer as follows:

(a) Organization and Standing. Seller is duly organized, validly existing and in good standing as a corporation under the laws of the State of Illinois, and has full power and authority to perform all of its respective obligations under this Agreement and to own, operate and lease the Assets and carry on the Business, as applicable, as it is presently conducted. Seller is qualified to do business as a foreign corporation, and is in good standing, in every jurisdiction in which the nature of its activities requires such qualification. The Shareholder owns 100% of the issued and outstanding stock of Seller.

(b) Authority. Each of Seller and the Shareholder has full power and authority to enter into and perform this Agreement and each of the Transaction Documents to which it is a party and to consummate the transactions contemplated thereby in accordance with their respective terms. The execution, delivery and performance of this Agreement and each of the Transaction Documents have been duly authorized by all necessary corporate or other action and will not result in, and the consummation of the transactions contemplated hereby shall not result in, (i) a violation of any provision of Seller’s Articles of Incorporation or Bylaws or similar organizational document, (ii) a violation of or default (or event which with notice or lapse of time or both would constitute a default) under, or the acceleration of any obligation under, any Material Contract, (iii) any judgment, decree or order of any court or governmental authority or

agency to which Seller is a party or by which Seller or its properties is bound, or (iv) any statute, law, rule or regulation applicable to Seller. Neither Seller nor the Shareholder is otherwise a party to any contract or subject to any other legal restriction that would prevent or restrict complete fulfillment by Seller or the Shareholder of all of the terms and conditions of the Transaction Documents to which they are a party or compliance with any of their obligations thereunder. This Agreement, and when delivered, each of the Transaction Documents to which Seller or the Shareholder is a party, have been duly executed and delivered by Seller and the Shareholder and constitute (or will constitute when executed and delivered), the legal, valid and binding obligations of Seller and the Shareholder, enforceable against each of them in accordance with their respective terms.

(c) Consents. Except as set forth in Section 4.1(c) of the Disclosure Schedule, no consents or approvals of, or notices to, any third Person and no consents or waivers from, or notices to, any other parties to leases, licenses, franchises, Permits, indentures, Contracts or other instruments are required for the consummation by Seller and/or the Shareholder, as the case may be, of the transactions contemplated by the Transaction Documents to which they are or will be a party. Except as set forth in Section 4.1(c) of the Disclosure Schedule, the Assumed Liabilities to be transferred to and assumed by Buyer pursuant to the terms of the Transaction Documents are transferable and assumable by Buyer without the consent or approval of, or notice to, any Person.

(d) Financial Statements. Seller has provided to Buyer correct and complete copies of the following financial statements (collectively, the "Financial Statements"): the unaudited balance sheets of Seller as of December 31, 201\_, 201\_, 201\_ and 201\_, and the related statements of income and cash flows of Seller for the years then ended. The balance sheet of Seller as of December 31, 201\_ is referred to herein as the "Balance Sheet." The Financial Statements are in accordance with the books and records of Seller and fairly present the financial position of Seller as of the dates thereof, and the results of operations and cash flows of Seller for the period set forth thereon. Each of the Financial Statements, including the notes thereto, has been prepared in accordance with GAAP consistently applied during the periods involved. The books and records of Seller have been, and are being, maintained in accordance with all applicable legal requirements and GAAP.

(e) No Undisclosed Liabilities. Seller has no liabilities, obligations or commitments of any nature (whether absolute, accrued, contingent or otherwise and whether matured or unmatured), including Tax liabilities due or to become due, except (a) liabilities which are reflected and reserved against on the Balance Sheet which have not been paid or discharged since the date thereof, (b) accounts payable and accrued expenses incurred in the ordinary course of Seller's business consistent with past practice since the date of the Balance Sheet which have not caused the level of Seller's accounts payable or accrued expenses to increase materially from the amounts reflected on the Balance Sheet, (c) liabilities arising in the ordinary course of business consistent with past practice under Contracts (other than any liability resulting from, arising out of, relating to, in the nature of, or caused by any breach of contract, breach of warranty, tort, infringement or violation of law), and (d) as set forth on Section 4.1(e) of the Disclosure Schedule.

(f) Absence of Changes. Except as set forth in Section 4.1(f) of the Disclosure Schedule, since the date of the Balance Sheet, Seller has not experienced a Material Adverse Effect.

(g) Litigation. Except as set forth in Section 4.1(g) of the Disclosure Schedule, there are no Actions pending or to Seller's Knowledge threatened by or against the Business or affecting any of the Assets. Except as set forth in Section 4.1(g) of the Disclosure Schedule, none of the Business nor any of the Assets is a party to, bound by or subject to any Governmental Order (nor are there any such Governmental Orders threatened to be imposed by any Governmental Authority). To Seller's Knowledge, there are no facts that, if known by a potential claimant or Governmental Authority, would give rise to a claim or proceeding that, if asserted or conducted with results unfavorable to Seller, would have a Material Adverse Effect, or materially and adversely affect the consummation of the transactions contemplated hereby or the use of the Assets by Seller or Buyer.

(h) Compliance with Laws. Except as set forth in Section 4.1(h) of the Disclosure Schedule, Seller, the Shareholder with respect to the Business, the Business and the Assets have complied with all Laws and Governmental Orders applicable to Seller, the Shareholder, the Business or the Assets. Seller has not received notice of any violation of any federal, state or other law, rule, regulation, order or decree relating to the operation of the Business or to the Assets, and Seller has no Knowledge of any threatened claim of such a violation (including any investigation relating thereto). Neither Seller nor the Shareholder are a party to, bound by or materially adversely affected by any decree, order or arbitration award (or agreement entered into in any administrative, judicial or arbitration proceeding with any Governmental Authority) with respect to the Business or the Assets.

(i) Contracts. Except as set forth on Section 4.1(i) of the Disclosure Schedule, Seller is not, with respect to the Business or the operation thereof, a party to, nor are any of the Assets bound or subject to, any:

(i) Contract or other similar document that has an aggregate value of US \$5,000 or more;

(ii) Contract or other similar document that cannot be terminated or canceled without further liability to Seller, the Business or the Assets on the giving of notice of thirty (30) days or less;

(iii) Contract with any present or former employee or consultant, or for the employment of any Person, including any consultant, who is engaged in the conduct of the Business;

(iv) distribution, dealer, representative or sales agency agreement or other similar Contract;

(v) Contract or commitment limiting or restraining the Business or any successor thereto from engaging or competing in any manner or in any business, nor, to Seller's



Knowledge, is any employee of the Business engaged in the conduct of the Business subject to any such Contract or commitment;

(vi) Contract relating to non-disclosure or otherwise restricting use of the confidential information of Seller or any third Person;

(vii) Contract relating to borrowed money or other indebtedness or the mortgaging, pledging or otherwise placing an Encumbrance on any Asset;

(viii) Contract relating to the sale of the Product or provision of services related to the Product; or

(ix) Contract or other undertaking that is material to the condition of the Business, including, contracts with officers, employees, agents, consultants, advisors, salesmen, sales representatives, distributors or dealers.

Each of the Contracts and other agreements and commitments listed on Section 4.1(i) of the Disclosure Schedule and all IP Licenses shall be collectively referred to herein as the “Material Contracts.” All Assumed Contracts are legal, valid, binding and enforceable in accordance with their terms, in full force and effect and to Seller’s Knowledge binding upon the other parties thereto. Except as set forth in Section 4.1(i) of the Disclosure Schedule, there is no breach or default in any material respect by Seller or, to Seller’s Knowledge, any other party in the performance, observance or fulfillment of any obligations, covenants, liabilities or conditions contained in any of the Contracts, and no event has occurred or condition exists (it being understood that with respect to any event or condition that may have been caused by a third party other than Seller, the existence of such event or condition shall be limited to Seller’s Knowledge) that with or without notice, lapse of time or the happening or occurrence of any other event would constitute a breach or default in any material respect, or permit termination, modification or acceleration, by any party to, or bound by, the Contracts. Except as set forth in Section 4.1(i) of the Disclosure Schedule, Seller has not sold, assigned, secured, pledged, transferred, conveyed, mortgaged, deeded in trust or encumbered in any way any interest in any of the Assumed Contracts. Except as set forth in Section 4.1(i) of the Disclosure Schedule, there are no disputes, oral agreements or forbearance programs in effect as to any Assumed Contract. Seller has delivered complete and accurate copies of all Material Contracts that are in writing (including any amendments or supplements thereto) to Buyer, and any oral Material Contract has been summarized on Section 4.1(i) of the Disclosure Schedule. Except as set forth in Section 4.1(i) of the Disclosure Schedule, no consent or approval from, or notice to, any third Person is required for transfer and assignment of the Assumed Contracts to Buyer pursuant to this Agreement. Upon assignment by Seller of the Contracts to Buyer at the Closing, each of the Assumed Contracts will vest in Buyer at the Closing. Except as set forth in Section 4.1(i) of the Disclosure Schedule, no Affiliate of Seller, or any officer, director, employee, shareholder or any “associate” of Seller (as the term “associate” is defined in Rule 405 of the Rules and Regulations promulgated under the Securities Act of 1933, as amended) is party to any Material Contract, except for employment contracts.

(j) Significant Customers. Seller has no Knowledge of any intentions of or indications by any of its Significant Customers (as defined below) that any of its Significant Customers intend to terminate, limit or alter its business relationship with Seller in any respect that would result in a Material Adverse Effect as a result of the transactions contemplated by this Agreement or otherwise. Section 4.1(j) of the Disclosure Schedule sets forth a correct and complete list of the 10 largest customers of Seller who purchase products or services from the Business, measured in terms of dollar value of sales, during the calendar year 2003 to date (collectively, the “Significant Customers”).

(k) Taxes. Except as set forth in Section 4.1(k) of the Disclosure Schedule, (a) all federal, state, local and foreign Tax information and Tax returns pertaining to the Business or the Assets required to be filed before the date hereof have been duly and timely filed, (b) all Taxes heretofore due and payable (whether or not shown to be due in such Tax information and returns) have been timely paid in full, (c) no deficiencies for any Taxes with respect to Taxes attributable to the Business or the Assets have been asserted, (d) no waivers of statutes of limitation or extensions of time with respect to a Tax assessment have been given or requested regarding any Taxes attributable to the Business or the Assets, (e) there are no liens for Taxes on the Assets, except for Taxes not yet due and payable, (f) no consent has been filed under Section 341(f) of the Code with respect to Seller; (g) none of the Assets is tax-exempt-use property within the meaning of Section 168(h) of the Code; (h) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party; and (i) Buyer will not be required to deduct and withhold any amount pursuant to Section 1445(a) of the Code or any provision of state or local law upon payment of the Purchase Price. Except as set forth in Section 4.1(k) of the Disclosure Schedule, no dispute or claim pertaining to any Tax liability of the Seller relating to the Business or the Assets has been raised in writing by any Governmental Authority in the course of any audit nor, to the Knowledge of Seller, has any such dispute or claim been threatened. Except as set forth in Section 4.1(k) of the Disclosure Schedule, the Business is not a party to, the subject of or bound by any tax sharing or similar agreement or contract.

(l) Intellectual Property.

(i) The Intellectual Property defined in Section 1.1(d) includes all Trademarks, Copyrights, Patents, trade secrets, source code, plug-ins, content, data and other intellectual property, proprietary rights used in the Business and comprises all Intellectual Property necessary to conduct the Business as it currently is being conducted and sell the Product as it is currently being sold, in each case consistent with past practice. Section 4.1(l) of the Disclosure Schedule sets forth (a) all registrations and applications related thereto that have been submitted to any Governmental Authority with respect to the Intellectual Property, and (b) each and every license, sublicense, consent-to-use agreement and other agreement concerning the Intellectual Property to which Seller and/or an Affiliate is a party (“IP Licenses”).

(ii) Except as disclosed on Section 4.1(l) of the Disclosure Schedule, (a) Seller is the sole owner of and has the sole right to use all of the Intellectual Property; (b) all of the Intellectual Property is valid, enforceable and unexpired, is free of Encumbrances, has not

been abandoned, does not infringe or otherwise impair the intellectual property or other proprietary rights of any third party and to Seller's Knowledge, is not being infringed or impaired by any third party; (c) no Governmental Order has been rendered or, to Seller's Knowledge, is threatened by any Governmental Entity which would limit, cancel or question the validity of Seller's or any Affiliate's right to own or use any Intellectual Property; (d) no Action is pending or, to the Knowledge of Seller, threatened that seeks to limit, cancel or question the validity of Seller's, or an Affiliate's right to own or use any Intellectual Property; (e) Seller has taken all necessary steps to protect, maintain and safeguard the Intellectual Property, and has made all filings and executed all agreements necessary in connection therewith and has maintained such Intellectual Property in good standing; (f) to Seller's Knowledge, no party to an IP License is, or is alleged to be, in breach or default thereunder; (g) Seller has obtained all written agreements and documents from Seller's current and former employees, consultants and contractors necessary to perfect and evidence Seller's ownership of the Intellectual Property; and (h) with regard to any IP Licenses, the transactions contemplated by this Agreement do not require the consent of any third party and will not cause any payments to be due to any third party thereunder.

(m) Title; Encumbrances; Condition of the Assets. Seller has, and will convey to Buyer at Closing, good, marketable and indefeasible title to all of the Assets, free and clear of all Encumbrances and title defects, except liens for current Taxes not yet due or any Taxes being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established which are reflected on the Balance Sheet (the "Permitted Encumbrances"). The tangible Assets are in good operating condition and repair (reasonable wear and tear excepted), have been operated and maintained in accordance with normal industry practice and are free of any material structural or engineering defects. None of the Seller's Affiliates conducts or operates any part of the Business or owns or has possession of any assets necessary or useful in conducting or operating the Business.

(n) Brokers. No broker, finder, investment banker or other third party is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

(o) Product and Service Issues. Except as set forth in Section 4.1(o) of the Disclosure Schedule, to Seller's Knowledge there is no alleged or actual defect, error or "bug", or alleged or actual failure to warn of any of the foregoing, in any product, including software, which has been developed, designed, written or sold by the Business. Except as set forth in Section 4.1(o) of the Disclosure Schedule, there are no outstanding customer complaints which have not been cured.

(p) Insurance. Section 4.1(p) of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, product liability and workers' compensation coverage and bond and surety arrangements) to which Seller is a party and which relate to the conduct of the Business: (i) the name of the insurer, the name of the policy holder and the name of each covered insured; (ii) the policy number and the period of coverage and type of coverage; and (iii) a description of any retroactive premium adjustments or other loss-sharing arrangements. Section 4.1(p) of the

Disclosure Schedule contains a summary of all material claims submitted, pending or paid under such policies within the past three (3) years. Seller has in full force and effect adequate insurance (of the character usually maintained by corporations engaged in the same or similar businesses) to provide for the reasonable protection of the Assets and Business, all of which insurance will be available with respect to pre-closing occurrences.

(q) Permits. Section 4.1(q) of the Disclosure Schedule sets forth a complete listing of all Permits used by Seller in its conduct or operation of the Business or required for the continued lawful use, lease, occupancy and/or ownership of the Assets. Seller owns or has full rights under all Permits. Seller is in compliance in all material respects with all Permits, all of which are in full force and effect, except as would not have a Material Adverse Effect. Except as set forth in Section 4.1(q) of the Disclosure Schedule, the consummation of the transactions contemplated hereby will not result in any revocation, cancellation or suspension of any of the Permits and each of the Permits is freely transferable or assignable to Buyer on the Closing Date without the consent of any third party. No actions or proceedings to revoke or modify any Permit are pending or, to the Seller's Knowledge, threatened.

(r) Disclosure. No representation or warranty by Seller or the Shareholder contained in this Agreement (including the Disclosure Schedule and the Exhibits referred to herein) or any Transaction Document contains or will contain as to the applicable representation or warranty any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein and therein, when considered in light of the circumstances under which they were made, not misleading.

**Section 4.2 Representations and Warranties of Buyer.** Buyer represents and warrants to Seller that:

(a) Organization and Standing. Buyer is duly organized, validly existing and in good standing as a corporation under the laws of the State of Delaware, and has full power and authority to perform all of its obligations under this Agreement.

(b) Authority; No Conflicts. Buyer has full power and authority to enter into and perform the Agreement and each of the Transaction Documents to which it is a party and to consummate the transactions contemplated thereby in accordance with their respective terms. The execution, delivery and performance of this Agreement and each of the Transaction Documents have been duly authorized by all necessary corporate or other action and do not result in, and the consummation of the transactions contemplated hereby shall not result in, a violation of (i) any provision of its Articles of Incorporation or Bylaws or similar organizational document, (ii) any judgment, decree or order of any court or governmental authority or agency to which Buyer is a party or by which Buyer or its properties is bound, or (iv) any statute, law, rule or regulation applicable to Buyer. This Agreement and each of the Transaction Documents has been duly executed and delivered by Buyer and constitutes (or will constitute when executed and delivered), the legal, valid and binding obligations of Buyer enforceable in accordance their respective terms.

(c) Consents. Buyer has obtained all governmental consents and approvals required to be obtained by it to enter into and perform under this Agreement and to consummate the transactions contemplated hereby.

(d) Brokers. No broker, finder, investment banker or other third party is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

(e) Financial Condition. Buyer has adequate financing or financial resources available to consummate the transactions contemplated by this Agreement, including the payment of the Purchase Price hereunder.

## ARTICLE V

### COVENANTS OF THE PARTIES

**Section 5.1 Further Assurances** After the Closing, Seller shall, at Buyer's reasonable request and without further consideration, execute such additional instruments of conveyance and transfer and provide to Buyer such additional documents as Buyer may require more effectively to convey and transfer the Assets to Buyer, including without limitation, any materials necessary to effectuate registration, recordation or protection of the Intellectual Property.

**Section 5.2 Ongoing Product Support** Within 60 days of the Closing Date, Seller shall make the error corrections set forth on Section 4.1(o) of the Disclosure Schedule, the modifications set forth on Section 5.2 of the Disclosure Schedule and such error corrections of which Buyer notifies Seller not later than 30 days following the Closing Date. Seller shall submit such error corrections and modifications to Buyer for review and testing. In the event that Buyer determines that the submissions do not meet requirements, Seller shall make the necessary changes and resubmit to Buyer for review hereunder within ten days.

### **Section 5.3 Covenant Not To Compete**

(a) For a period of three years after the Closing Date, neither Seller nor the Shareholder shall, directly or indirectly, through an Affiliate or otherwise, own, manage, operate or control any business, firm, sole proprietorship, corporation, partnership, limited liability company, joint venture or other entity, enterprise or association that is engaged, anywhere in the world, in the development, marketing and/or selling of (i) any product using, incorporating or replicating the existing source code of the Product or (ii) any internet-based product containing functionality that, in aggregate, could reasonably be interpreted as being directly competitive with the aggregate functionality of the Product as delivered to Buyer; *provided, however*, that the foregoing shall not prohibit Seller or the Shareholder from owning stock as a passive investor (and not as a director, employee, consultant, agent or independent contractor) in any publicly owned corporation so long as Seller's or Shareholder's ownership in such corporation, directly or indirectly, and when aggregated with the direct or indirect ownership of any Affiliate of Seller or the Shareholder, as applicable, is less than 5% of the voting stock of such corporation.

(b) If any provision of this Section 5.3 is held to be unenforceable because of the scope, duration or area of its applicability, the court making such determination shall have the power to modify such scope, duration or area or all of them, and such provision shall then be applicable in such modified form.

(c) Since a violation of this Section 5.3 will result in irreparable harm to the Business and Buyer, for which money damages alone would not adequately compensate, if Seller or the Shareholder or an Affiliate of Seller or the Shareholder violates any of the provisions of this Section 5.3, Buyer shall be entitled to an injunction restraining the commission or continuation of any violation of this Section 5.3 by such Person, or any other appropriate decree of specific performance. Such remedies shall not be exclusive and shall be in addition to any other remedy that Buyer may have.

(d) Should Buyer file suit to enforce this Section 5.3, the three-year time period referred to in Sections 5.3(a) shall be tolled during the pendency of the suit.

**Section 5.4 Sales and Transfer Taxes** Seller shall be responsible and liable for all sales, use and transfer taxes including the filings of all necessary Tax returns, if any, that may be due as a result of or arise from the sale and transfer of the Assets to Buyer. Seller shall indemnify and hold Buyer harmless from any liability or expense in connection with any such sales or transfer taxes.

**Section 5.5 Non-Assignable Contracts.** Nothing in this Agreement shall be construed as an attempt to assign to Buyer any Contract which is by law or its terms non-assignable or the assignment of which would constitute a violation of statute, rule, regulation, contract, commitment or other agreement. If, as of the Closing, an attempted assignment of any Assumed Contract would be ineffective or would affect Seller's rights thereunder so that Buyer would not in fact receive all such rights, Seller shall cooperate with Buyer in a mutually acceptable arrangement, at Seller's cost, to provide for Buyer the benefit (including the economic benefit) of such Assumed Contract (other than legal title). If and so long after the Closing as such assignment shall not have been made, Seller shall (i) to the extent that such action shall not result in violation of such Assumed Contract, transfer to Buyer all assets and rights, including all monies, received in respect of such Assumed Contract and hold such Assumed Contract in trust for Buyer. To the extent that the provisions of the preceding sentence above are not sufficient to transfer all of the benefits (including the economic benefit) of such Assumed Contract (other than legal title), or any of such Assumed Contract has been canceled as a result of the attempted assignment, Seller shall take such actions (which, without limitation, may include entering into subcontracting arrangements with Buyer) as are necessary to provide all of the benefits (or the equivalent thereof, including the economic benefit) of such Contract or Permit (other than legal title) to Buyer. From and after the Closing, Seller shall use its commercially reasonable efforts to obtain any consents or approvals to fully assign such any such Assumed Contract (including legal title thereto) to Buyer.

**Section 5.6 Conduct of Litigation** Buyer and Seller shall cooperate fully in the prosecution or defense of any action, proceeding or claim by or against any third Persons involving the Assets, Assumed Liabilities, Excluded Assets and Retained Liabilities, and shall

consult and confer with one another with respect thereto, at no cost to Buyer, on the one hand, or Seller, on the other hand, other than reimbursement for out-of-pocket expenses.

**Section 5.7 Confidentiality** Each party agrees that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents (including the Transaction Documents). Seller and the Shareholder both agree that they shall treat in confidence all information related to the Business, the Assets and the Assumed Liabilities. After Closing, Buyer may elect to disclose or keep confidential information related to the Business, the Assets and the Assumed Liabilities at its discretion. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such party from a source other than such party, (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents, (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed, or (iv) such party reasonably deems disclosure necessary to obtain any of the consents or approvals contemplated hereby.

**Section 5.8 Tax Matters**

(a) Tax Returns. All returns and reports of all Taxes of Seller which constitute Retained Liabilities hereunder, including without limitation, consolidated federal, state or foreign income tax returns and declarations of estimated tax and tax reports, required to be filed after the Closing Date by Seller with respect to Taxes for periods ending on or prior to the Closing Date shall be prepared and filed by Seller and all Taxes payable pursuant thereto shall be paid by Seller.

(b) Cooperation. Buyer and Seller and their respective Affiliates shall cooperate in the preparation and defense of all tax returns relating in whole or in part to taxable periods ending on or before or including the Closing Date that are required to be filed after such date. Such cooperation shall include, but not be limited to, furnishing prior years' returns or return preparation packages illustrating previous reporting practices or containing historical information relevant to the preparation of such returns, and furnishing such other information within such party's possession requested by the party filing such returns as is relevant to their preparation. In the case of any state, local or foreign joint, consolidated, combined, unitary or group relief system returns, such cooperation shall also relate to any other taxable periods in which one party could reasonably require the assistance of the other party in obtaining any necessary information. After the Closing Date, each of Seller and Buyer shall furnish the other with copies of all correspondence received from any taxing authority in connection with any tax audit or information request with respect to any period beginning prior to the Closing Date.

(c) Access to and Destruction of Books and Records. For a period of six (6) years after the Closing, Seller and Buyer shall provide the other with reasonable access during normal business hours to its books and records (i) to the extent such books and records relate to the condition or operation of the Business prior to the Closing and (ii) are requested by such

other party (a) to prepare Tax returns, (b) to respond to third party claims, or (c) for any other legitimate purpose specified in writing. Seller and Buyer shall each have the right, at their own expense, to make copies of any such books and records. Neither Seller nor Buyer shall destroy any books or records to the extent that they relate to the condition or operation of the Business prior to the Closing without first offering to turn over possession to the other by written notice at least ninety (90) days prior to the proposed date of destruction.

(d) Confidentiality. Each of Seller and Buyer may take such action as it deems reasonably appropriate to separate or redact information unrelated to the Business from documents and other materials requested and made available pursuant to this Section 5.8 and to condition access to materials that it deems confidential to the execution and delivery of any agreement by the other party not to disclose or misuse such information.

(e) Allocation of Purchase Price. For tax purposes, Buyer and Seller shall allocate the Purchase Price and the aggregate dollar amount of the Assumed Liabilities among the Assets as set forth on Schedule 5.8. Buyer and Seller shall file all Tax returns and statements, forms and schedules in connection therewith consistent with such allocation and shall take no position contrary thereto unless required by law. Buyer and Seller shall treat the purchase and sale of assets under this Agreement as an “applicable asset acquisition” within the meaning of Section 1060 of the Code, and shall prepare and timely file Internal Revenue Service Form 8594 (and any required exhibits thereto) in a manner consistent with the allocation of the Purchase Price under this Section 5.8(e). The parties recognize that the Purchase Price does not include Buyer’s acquisition expenses and that Buyer shall allocate such expenses appropriately.

(f) Tax Examinations. Seller and its duly appointed representatives at its expense shall have the sole right to supervise or otherwise coordinate any tax examination process and to negotiate, resolve, settle or contest any asserted adjustment to income or deficiency in any tax or assert and prosecute any claim for refund of Taxes (a “Tax Claim”) for taxable periods ending on or before the Closing Date, provided that, in the event that such Tax Claim could reasonably be expected to materially affect Buyer, the Business or any of the Assets, Seller shall not settle, resolve or compromise such examination without the written consent of Buyer, which consent shall not be unreasonably withheld.

(g) Tax Clearances. Seller and the Shareholder, at their expense, shall obtain, as of the date of transfer of any tangible property to Buyer, all state sales and personal property tax clearances or similar clearances (and any foreign equivalents) in connection with the transactions contemplated hereby.

**Section 5.9 Seller’s Conduct** From and after the Closing, Seller shall perform any Contract that is not an Assumed Contract and pay any creditor of Seller in the ordinary course of business. From and after the Closing Seller shall collect its accounts receivables from Persons who are or become customers of Buyer only in the ordinary course. Without limiting the foregoing, Seller shall not sue or threaten to sue any such person and shall not refer any account receivable of any such Person to a collection agency without the prior written consent of Buyer, which consent shall not be unreasonably withheld.



**Section 5.10 License.** Effective as of the Closing, Seller hereby grants to Buyer a fully-paid up, royalty-free, irrevocable, worldwide, non-exclusive license in perpetuity (with the right to sublicense, but only to the extent incorporated into the Product or any derivatives of the Product) to utilize, copy, modify, make derivative works of and distribute, in connection with the Product or any derivatives of the Product, (i) the content contained in the Excluded Assets listed on Schedule 1.2, as such content is incorporated into the Product on the date hereof (the “Content”), and (ii) the standards correlation and assessment engine of Seller’s Current D3 Standards Engine, as such engine currently exists and is currently incorporated in the Product (the “Current D3 Standards Engine” and together with the Content, the “Licensed Products”). The foregoing license includes the right to distribute the Licensed Products in connection with the Product. The license to the Licensed Products includes any modifications or enhancements created by or on behalf of Seller or Shareholder with respect to the Licensed Products after the Closing until such time as Buyer is no longer procuring development services from Seller (under the Development and Consulting Agreement or otherwise). Periodically, at Buyer’s request during such time period, Seller shall deliver copies of such modifications or enhancements to Buyer, including source, object and executable code relating to the Current D3 Standards Engine as modified by all modifications and enhancements made to date. For the purpose of clarity, the foregoing license does not include any rights to any modifications or further developments of the Licensed Products made by Seller or the Shareholder after Buyer ceases to procure development services from Seller. Seller and Shareholder, jointly and severally, represent and warrant to Buyer that the Licensed Products do not and will not infringe or otherwise impair the intellectual property or other proprietary rights of any third party. The license granted to Buyer under this Section 5.10 shall not be transferable or assignable by Buyer except in connection with the subsequent sale by Buyer of the Business, whether by merger, sale of stock, sale of assets, or otherwise. The provisions of this Section 5.10 shall survive the Closing of this Agreement and any expiration or termination of this Agreement.

## ARTICLE VI

### CLOSING

**Section 6.1 The Closing.** The consummation of the transactions (the “Closing”) contemplated by this Agreement shall take place on the date hereof (the “Closing Date”) at the offices of OFFICE A, ADDRESS A, or at such other place, date and time as the parties shall mutually agree. The Closing shall be effective as of the close of business on the Closing Date. The delivery of all documents and the performance of all acts at the Closing shall be deemed to have occurred or to have been taken simultaneously.

**Section 6.2 Closing Deliveries of Buyer.** At the Closing and subject to the terms and conditions of this Agreement, Buyer shall deliver to Seller the following:

(a) **Purchase Price.** The Closing Payment in cash in United States dollars by wire transfer of immediately available funds in accordance with written instructions provided by Seller to Buyer;

(b) Development and Consulting Agreement. A Development Agreement substantially in the form of Exhibit A (the “Development and Consulting Agreement”) duly executed by Buyer;

(c) Instruments of Assumption. A Bill of Sale, Assignment and Assumption Agreement substantially in the form of Exhibit B (the “Bill of Sale”) and such other instruments, certificates or documents as shall be reasonably requested by Seller for the assignment and assumption of the Assumed Liabilities.

**Section 6.3 Closing Deliveries of Seller** At the Closing and subject to the terms and conditions of this Agreement, Seller shall deliver to Buyer the following:

(a) Development and Consulting Agreement. The Development and Consulting Agreement, duly executed by Seller;

(b) Certificate of Incorporation. A copy of Seller’s Articles of Incorporation, certified by the Secretary of State of the State of Illinois;

(c) Secretary’s Certificate. A Certificate of Secretary of Seller certifying as to (i) Seller’s Bylaws in effect as of the Closing Date; (ii) Resolutions of Seller’s Board of Directors and its shareholders authorizing and approving the transactions contemplated hereby and (iii) incumbency of the officers of Seller who have executed this Agreement and each of the other Transaction Documents to which Seller is a party on behalf of Seller;

(d) Evidence of Lien Releases. Evidence of the releases of any Encumbrances on the Assets;

(e) Name Change. Duly authorized and executed amendments to the Articles of Incorporation of Seller changing the corporate name of Seller to a name that does not contain the words “quick” or “mind” or any variation, derivation or abbreviation thereof;

(f) Instruments of conveyance. The Bill of Sale and such other instruments of transfer and conveyance as shall be reasonably requested by Buyer for the transfer of all of Seller’s right, title and interest to and in the Assets; and

(g) Third Party Approvals. All material consents, authorizations, orders or approvals of, and filings or registrations with, any Governmental Authority or any party to an Assumed Contract which are required for or in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, including without limitation the assignment and assumption of the Assumed Contracts.

## ARTICLE VII

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

**Section 7.1 Survival of Representations and Warranties** The representations and warranties of Seller and the Shareholder contained in Section 4.1 shall be fully enforceable at law or in equity against Seller and the Shareholder and their respective successors and assigns, by Buyer and its successors and assigns, for one year after the Closing Date (except for any representations and warranties made under Section 4.1(k) (Taxes), which survive the Closing until the expiration of the applicable statute of limitations, and representations and warranties made under Section 4.1(a) (Organization and Standing), Section 4.1(b) (Authority) and Section 4.1(m) (Title), which survive indefinitely). The representations and warranties of Buyer contained in Section 4.2 shall survive the Closing, and shall be fully enforceable at law or in equity against Buyer and its successors and assigns, by Seller and its respective successors and assigns, until payment in full of the Earn-Out Payment or the determination that no such payment is due. All claims by either party for breach of a representation and warranty of the other party shall be made within the survival period applicable to such representation and warranty, in which case the particular representation and warranty shall survive until the final resolution of the claim. All covenants by either party shall survive the Closing until fully performed.

### **Section 7.2 Indemnification of Buyer**

(a) Subject to the provisions of Section 7.1, Seller and the Shareholder shall, jointly and severally, indemnify and hold Buyer and its Affiliates and their respective directors, officers, employees and agents (collectively, the "Buyer Indemnitees") harmless from and against:

(i) Any loss, liability, claim or damage (A) arising out of or related to the Excluded Assets or Retained Liabilities, (B) resulting from the breach (or any third party claim that, if true, would constitute a breach) of any representation or warranty, or any misrepresentation by Seller or the Shareholder set forth in this Agreement or the Transaction Documents or (C) any breach (or any third party claim that, if true, would constitute a breach) of any covenant of Seller or the Shareholder set forth in this Agreement or the Transaction Documents, in any case whether or not arising out of any claim from any third party; and

(ii) Any cost or expense, including reasonable attorneys' fees and expenses (except when Seller and/or the Shareholder are defending the claim in accordance with Section 7.3), of the Buyer Indemnitees incident to a loss, liability, claim or damage for which the Buyer Indemnitees are indemnified pursuant to Section 7.2(a)(i), in any case whether or not arising out of any claim from any third party.

(b) Notwithstanding the foregoing, Seller and the Shareholder shall not be liable under clause (B) of Section 7.2(a)(i) above until the aggregate amount of losses, liabilities, claims, damages, costs and expenses incurred by Buyer exceeds US \$\_\_\_\_\_, in which case Buyer shall be entitled to recover the full amount of such losses, liabilities, claims, damages, costs and expenses from dollar one; *provided, however*, that this US \$\_\_\_\_\_ threshold shall not apply to representations and warranties made pursuant to Section 4.1(a) (Organization and

Standing), Section 4.1(b) (Authority), 4.1(k) (Taxes) and 4.1(m) (Title). Notwithstanding anything herein to the contrary, the aggregate amount of losses, liabilities, claims, damages, costs and expenses that Seller and the Shareholder shall be liable for under clause (B) of Section 7.2(a)(i) above shall not exceed the Purchase Price.

**Section 7.3 Notice to Seller or the Shareholder** In the event that any of the Buyer Indemnitees becomes aware of facts or events giving rise to obligations of Seller or the Shareholder to indemnify the Buyer Indemnitees under Section 7.2, Buyer shall notify Seller or the Shareholder, as applicable, of such fact or event in writing, setting forth specifically the obligation with respect to which the claim is made, the facts giving rise to and the alleged basis for such claim and, if known or reasonably ascertainable, the amount of the liability asserted or which may be asserted by reason thereof. Such notice shall be given within a reasonable time of the discovery by the Buyer Indemnitees of facts which constitute the basis for a claim against the Buyer Indemnitees which may give rise to a right of indemnity or promptly following receipt of notice of the assertion of a claim against the Buyer Indemnitees which may give rise to a right of indemnity, whichever shall occur first; *provided, however*, that failure to so notify Seller or the Shareholder of any such claim shall discharge Seller or the Shareholder, as applicable, of their liabilities and obligations hereunder only if and to the extent that Seller or the Shareholder is materially prejudiced thereby. In the event of the assertion of a claim against the Buyer Indemnitees which may give rise to a right of indemnity, the Buyer Indemnitees shall allow Seller or the Shareholder to, and Seller or the Shareholder shall, at their respective expense, defend against such claim with counsel of Seller's, or the Shareholder's, selection subject, in any case, to the Buyer Indemnitees' approval, not to be unreasonably withheld or delayed; *provided, however*, that Seller or Shareholder, as applicable, shall not settle, adjust or compromise such claim without the prior written consent of the Buyer Indemnitees. The Buyer Indemnitees shall, at their own expense, provide such documents, records and other evidence in their possession, and access to such employees, as Seller or the Shareholder may reasonably request, shall cooperate with Seller or the Shareholder in defending such claim, and shall take no other action with regard to an indemnified claim or any investigation, proceeding or action relating thereto, which is in derogation of Seller's or the Shareholder's right of control or which has not been specifically requested or approved in advance by Seller or the Shareholder.

**Section 7.4 Indemnification of Seller and the Shareholder** (a) Subject to the provisions of Section 7.1, Buyer shall indemnify and hold harmless Seller and the Shareholder and their Affiliates and their respective directors, officers, employees and agents (collectively, the "Seller Indemnitees") from:

(i) Any loss, liability, claim or damage (A) arising out of or related to the Assumed Liabilities, (B) resulting from the breach (or any third party claim that, if true, would constitute a breach) of any representation or warranty, or any misrepresentation by Buyer set forth in this Agreement or (C) any breach (or any third party claim that, if true, would constitute a breach) of any covenant of Buyer set forth in this Agreement.

(ii) Any cost or expense, including reasonable attorneys' fees and expenses (except when Buyer is defending the claim in accordance with Section 7.5), of the

Seller Indemnitees incident to a loss, liability, claim or damage for which the Seller Indemnitees are indemnified pursuant to Section 7.4(a)(i).

(b) Notwithstanding the foregoing, Buyer shall not be liable under clause (B) of Section 7.4(a)(i) until the aggregate amount of such losses, liabilities, claims, damages, costs and expenses exceeds US \$\_\_\_\_\_, in which case Seller and the Shareholder shall be entitled to recover the full amount of such losses, liabilities, claims, damages, costs and expenses from dollar one. Notwithstanding anything herein to the contrary, the aggregate amount of losses, liabilities, claims, damages, costs and expenses that Buyer shall be responsible for pursuant to clause (B) of Section 7.4(a)(i) above shall not exceed the Purchase Price.

**Section 7.5 Notice to Buyer** In the event that the Seller Indemnitees become aware of facts or events giving rise to obligations of Buyer to indemnify the Seller Indemnitees under Section 7.4, the Seller Indemnitees shall notify Buyer of such fact or event in writing, setting forth specifically the obligation with respect to which the claim is made, the facts giving rise to and the alleged basis for such claim and, if known or reasonably ascertainable, the amount of the liability asserted or which may be asserted by reason thereof. Such notice shall be given within a reasonable time of the discovery by the Seller Indemnitees of facts which constitute the basis for a claim against the Seller Indemnitees which may give rise to a right of indemnity or promptly following receipt of notice of the assertion of a claim against the Seller Indemnitees which may give rise to a right of indemnity, whichever shall occur first; *provided, however*, that failure to so notify Buyer of any such claim shall discharge Buyer of its liabilities and obligations hereunder only if and to the extent that Buyer is materially prejudiced thereby. In the event of the assertion of a claim against the Seller Indemnitees, or any of their respective subsidiaries, which may give rise to a right of indemnity, the Seller Indemnitees shall allow Buyer to, and Buyer shall, at its expense, defend against, compromise or settle such claim with counsel of Buyer's selection. The Seller Indemnitees at their own expense, shall provide such documents, records and other evidence in their possession, and access to such employees, as Buyer may reasonably request, shall cooperate with Buyer in defending such claim, and shall take no other action with regard to any indemnified claim or any investigation, proceeding or action relating thereto, which is in derogation of Buyer's right of control or which has not been specifically requested or approved in advance by Buyer.

**Section 7.6 Resolution of Conflicts** In the event a party disputes its obligation to indemnify the other party under this Article VII, the disputing party shall have 30 days after receipt of notice under Section 7.3 or Section 7.5, as applicable, to give written notice of such objection, and the grounds therefor, and the other party shall thereafter have 30 days to respond in writing to the objection of the disputing party. If after such 30-day period there remains a dispute as to any obligation, the parties shall attempt in good faith for 30 days to agree upon the rights of the respective parties with respect to such indemnification obligation. If no such agreement can be reached after good faith negotiation, either party may litigate the matter in accordance with the provisions of Section 8.7.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1 Amendments** This Agreement may be amended, modified or supplemented only by a writing signed by each of the parties hereto.

**Section 8.2 Waivers** Buyer and Seller may only extend the time for, or waive the performance of, any of the obligations of the other or waive compliance by the other with any of the covenants or conditions contained in this Agreement in writing signed by an officer of such party. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision hereof (whether or not similar), nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

**Section 8.3 Public Announcements** Neither of the parties shall make, issue or release any oral or written public announcement or statement concerning, or acknowledge the existence of, or reveal the terms, conditions and status of, the transactions contemplated by this Agreement, without the other party's prior written approval of, and concurrence in, the contents of such announcement, acknowledgment or statement.

**Section 8.4 Notices** Any notice, request, instruction or other document to be given hereunder shall be in writing and delivered personally or sent by telecopy or prepaid overnight courier, if to:

Buyer: Buyer Corporation  
Buyer Corporation Address

And a copy to: Office A  
Office A Address

Seller or the Shareholder: Seller Corporation  
Seller Corporation Address

With a copy to: Office B  
Office B Address

Any notice or other communication transmitted in accordance with this Section 8.4 shall for all purposes of this Agreement be treated as given or effective, if personally delivered, upon receipt, or, if sent by courier, upon the earlier of receipt or the end of the business day following the date of delivery to such courier, or, if telecopied, upon transmission and confirmation of receipt.

**Section 8.5 Entire Agreement.** The Disclosure Schedule and Exhibits are incorporated into this Agreement by reference. This Agreement and the Disclosure Schedule and Exhibits hereto, together with the Transaction Documents, embody the entire agreement between the parties and any and all prior oral or written agreements, representations or warranties, contracts, understandings, correspondence, conversations, and memoranda, whether written or oral, among Buyer, Seller, the Shareholder and their respective agents, representatives, parents,

subsidiaries, affiliates, predecessors in interest or successors in interest, with respect to the subject matter hereof, are merged herein and replaced hereby. If there is any discrepancy or inconsistency between the terms of this Agreement and any other agreement executed by or on behalf of Seller to transfer any of the Assets or assign any of the Assumed Liabilities, the terms of this Agreement shall supersede and replace the terms of any such other agreement with respect to any such discrepancy or inconsistency.

**Section 8.6 Assignability; Third-Party Rights.** Neither this Agreement nor any of the parties' rights hereunder shall be assignable by any party hereto without the prior written consent of the other party; *provided, however*, that Buyer may assign this Agreement to any Affiliate. Any attempted assignment of this Agreement in breach of this provision shall be void and of no effect. In the event that any assignment is validly made, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, shall be deemed to confer upon any other person, including without limitation employees of the Business, any rights or remedies under, or by reason of, this Agreement.

**Section 8.7 Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois without giving effect to principles of conflict of laws. All parties consent to the exclusive jurisdiction of all state and federal courts of record situated in the State of Illinois. Service of process upon any party shall be deemed, in every respect, effective upon such party if made by prepaid registered or certified mail, return receipt requested, or if personally delivered against receipt to the address set forth in Section 8.4 or to such other address as a party may designate in writing to the others.

**Section 8.8 Headings; Definitions.** The Section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Wherever in this Agreement words indicating the plural number appear, such words shall be considered as words indicating the singular number and vice versa where the context indicates the propriety of such use.

**Section 8.9 Counterparts.** This Agreement may be executed by facsimile transmission and in counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**Section 8.10 Expenses.** Except as otherwise specifically provided herein, each of the parties shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

## ARTICLE IX

### DEFINITIONS

#### **Section 9.1 Definitions**

“Action” means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

“Affiliate” means, with respect to any Person, any person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person (including without limitation its respective officers, directors and employees); *provided* that in no event shall Buyer or the Business be treated as an Affiliate of Seller, nor shall any person directly or indirectly controlled by Buyer or the Business (including, without limitation, its officers, directors and employees) as a result of such person’s relationship with Buyer or the Business be treated as an Affiliate of Seller. For this purpose, “control” means the power to direct the management and policies of a person through the ownership of securities, by contract or otherwise and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Copyrights” means copyrights and works of authorship in any media, including hardware, software (source, object and executable code), systems, data, databases and related items, Internet site content, catalogs, charts, diagrams, descriptive texts, advertising and promotional materials and literature, manuals and reports and other related documentation, drawings and models, and the materials or media embodying the foregoing.

“Contract” means any contract, agreement, lease, or offer open for acceptance of any nature, whether written or oral, related to or used in connection with the Business.

“Code” means the Internal Revenue Code of 1986, as amended.

“Disclosure Schedule” means the Disclosure Schedule, dated as of the date hereof, and forming a part of this Agreement.

“Encumbrance” means any security interest, pledge, mortgage, lien (including, without limitation, environmental and tax liens), charge, encumbrance, adverse claim, or restriction of any kind, including, without limitation, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“GAAP” means United States generally accepted accounting principles and practices as in effect from time to time and applied consistently throughout the periods involved.

“Governmental Authority” means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency, board, bureau, department, instrumentality or commission or any court, tribunal, judicial or arbitral body.

“Governmental Order” means any order, rules, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Knowledge” or “awareness” of any entity means the actual knowledge or awareness of such entity’s officers and other individuals exercising supervisory authority (including, with respect to Seller, the Shareholder) and such knowledge or awareness as such officers and individuals should have had after reasonable investigation.



“Law” means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law.

“Liabilities” means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including, without limitation, those arising under any Law, Action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

“Material Adverse Effect” or “Material Adverse Change” means any change in, or effect on the Business that, individually or in the aggregate, is, or could reasonably be expected to be, materially adverse to the Business, Assets, liabilities, prospects, properties, employee relations, management or customer relations, operations, or financial condition of the Business.

“Patents” means inventions, discoveries, designs, industrial designs, techniques, processes, specifications, drawings, sketches, tools, tooling devices, prototypes, molds, fixtures developments, technology, and related improvements and know-how, whether or not patented or patentable or reduced to practice.

“Permit” means any approval, authorization, consent, license, operating authority, certificate of public convenience, order or other permit, environmental or otherwise, relating to the Business.

“Person” means any individual, partnership, limited liability company, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

“Trademarks” means trademarks, service marks, trade names, brand names, corporate names, domain names and URLs, logos and trade dress and all elements thereof, the goodwill of any business symbolized thereby, and all common-law rights relating thereto.

“Transaction Documents” shall collectively refer to this Agreement, the Bill of Sale, and the Development and Consulting Agreement, each as amended, modified or supplemented from time to time in accordance with the terms thereof and all other instruments, certificates and agreements executed by any party hereto in connection with transactions contemplated by such agreements, including the Disclosure Schedule.

## **Section 9.2 Other Defined Terms**

<u>Defined Term</u>	<u>Section in Which Defined</u>
Agreement	Preamble
Arbitrator	3.2(b)
Assets	1.1
Assumed Contracts	1.1(f)

<u>Defined Term</u>	<u>Section in Which Defined</u>
Assumed Liabilities	2.1
Balance Sheet	4.1(d)
Bill of Sale	6.2(c)
Books and Records	1.1(g)
Business	Recitals
Buyer	Preamble
Buyer Indemnitees	7.2
Closing	6.1
Closing Date	6.1
Closing Payment	3.1
Current D3 Standards Engine	5.10
Development and Consulting Agreement	6.2(b)
Dispute Notice	3.2(b)
Earn-Out Payment	3.2(a)
Earn-Out Statement	3.2(a)
Equipment	4.1(d)
Excluded Assets	1.2
Financial Statements	4.1(d)
Inventory	1.1(c)
IP Licenses	4.1(l)(i)
Intellectual Property	1.1(e)
Material Contracts	4.1(i)
Net New Sales of the Product	3.2
Permitted Encumbrances	4.1(m)
Product	1.1(a)
Purchase Price	3.1
Retained Liabilities	2.2
Seller	Preamble
Seller Indemnitees	7.4
Shareholder	Preamble
Significant Customers	4.1(j)
Tax Claim	9.6
Taxes	1.2(e)

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**IN WITNESS WHEREOF**, the parties have each caused this Agreement to be executed as of the date first above written.

**BUYER:**

**BUYER CORPORATION**

By: \_\_\_\_\_

Name:

Title:

**SELLER:**

**SELLER CORPORATION**

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
**GEORGE WASHINGTON**

LAWYER'S MENTOR