

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
EFFECTIVE DATE:	12/15/2006

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Pilot Software Inc.		12/15/2006	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

Name:	Marketwave LLC
Street Address:	11200 Donner Pass Rd #117
City:	Truckee
State/Country:	CALIFORNIA
Postal Code:	96161
Entity Type:	LIMITED LIABILITY COMPANY: CALIFORNIA

**PROPERTY NUMBERS Total: 2**

Property Type	Number	Word Mark
Registration Number:	2260738	MARKETWAVE
Registration Number:	2253258	HIT LIST

**CORRESPONDENCE DATA**

Fax Number: (650)353-5244  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 415 901 1973  
 Email: richard@marketwave.com  
 Correspondent Name: Richard Hawkesworth  
 Address Line 1: 11200 Donner Pass Rd #117  
 Address Line 4: Truckee, CALIFORNIA 96161

NAME OF SUBMITTER:	Richard Hawkesworth for Marketwave LLC
Signature:	/Richard Hawkesworth for Marketwave LLC/
Date:	02/22/2007

OP \$65.00 2260738

**Total Attachments: 16**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“Agreement”) is made as of December 15, 2006 (“Effective Date”), between Pilot Software, Inc., a Delaware corporation (“Seller”) and Marketwave LLC, a California limited liability company (“Buyer”) (each a “Party,” and collectively the “Parties”).

The Parties agree as follows:

### 1. PURCHASE AND SALE.

1.1 Purchase of Assets. At the Closing, Seller will sell, transfer, and convey to Buyer, and Buyer will purchase from Seller, all of Seller’s right, title, and interest in and to the assets, properties, and rights of Seller related to (i) Seller’s Marketwave/HitList product line and (ii) customers of PilotWeb (the “Business”), including, but not limited to, customer lists, training materials, source code, marketing collateral, brand names, domain registrations, and other assets used in the conduct of, or generated by, or constituting, the Business, except for those Excluded Assets identified in Section 1.2 (collectively, the “Assets”). Assets also includes:

(a) Inventories. All inventories of the Business including CD roms and computer disks shipped from vendors on or prior to the Closing Date (as defined in Section 2.1) but not yet received by Seller.

(b) Contracts. To the extent permitted by applicable law, all rights under the contracts listed on **Exhibit A** (the “Assumed Contracts”).

(c) Intellectual Property. All intellectual property related to the Business, including all of the following: (i) all rights under any United States and foreign patent, trademark or service mark, copyright or mask work right, whether registered or unregistered, and any applications therefor, (ii) all technologies, patentable works, methods, formulations, data bases, trade secrets, know-how and inventions used in or owned by the Business, whether developed or under development, and (iii) all computer software, including documentation and related object and source codes (collectively, the “Intellectual Property”).

(d) Claims. All rights and claims of Seller against any third parties relating to the Business, including without limitation, all rights under express or implied warranties.

(e) Books and Records. All information, files, records, dates, plans, contracts and recorded information relating to the Business.

1.2 Excluded Assets. Notwithstanding the foregoing, the Assets shall not include any of the following (the “Excluded Assets”):

(a) Retained Intellectual Property. The brand name “PilotWeb” and the Strategy, Initiative, and Scorecard functionality in the PilotWeb product.

(b) Cash and Cash Equivalents. All cash and cash equivalents, whether in transit, in hand or in bank accounts.

(c) Receivables. All prepaid items, unbilled costs and fees, and accounts

notes and other receivables or rights to receive funds.

1.3 Purchase Price. The purchase price for the Assets (the “Purchase Price”) shall be US\$130,000, which shall be paid at Closing by wire transfer of immediately available funds.

1.4 Assumption of Liabilities.

(a) Assumed Liabilities. At the Closing, Buyer shall assume and agree to pay, perform, and discharge all debts and obligations of Seller arising on or after the Closing Date under the agreements and licenses listed in **Exhibit B** as well as any future product liability relating to the Business (the “Assumed Liabilities”).

(b) Unassumed Liabilities. Except for the Assumed Liabilities, Buyer shall not assume and shall not be obligated to pay, discharge, or indemnify any party with respect to, any liability, obligation, or commitment of any nature of Seller, whether now or hereafter existing or created (the “Unassumed Liabilities”), including but not limited to:

(i) Any claims under any expressed or implied contracts in effect as of the Effective Date, relating to products or services, including without limitation claims with respect to product warranties or product liabilities;

(ii) Taxes of any nature whatsoever of Seller arising from the operation of the Business or the ownership of the Assets for any period (or portion of any period) ending on or prior to the Closing Date;

(iii) Obligations under any employee agreements, including but not limited to, director and officer indemnification agreements, and profit sharing, pension, stock option, or any other equity benefit or ERISA plan; and

(iv) Any other claims or liabilities arising out of the operation of the Business (including but not limited to any real property leases or subleases) or the ownership of the Assets prior to Closing.

1.5 Allocation of Purchase Price. The purchase price for the Assets and Assumed Liabilities (together, the “Total Consideration”) as finally determined shall be allocated among the Assets and Assumed Liabilities as described on Schedule 1.5 which will be prepared by certified public accountants to be determined by Buyer and attached to this Agreement after Closing, subject to Seller’s reasonable approval. No party to this Agreement will take a position on any federal or state tax return, before any governmental agency charged with the collection of any income tax, or in any judicial proceeding that is in any way inconsistent with Schedule 1.5.

2. CLOSING.

2.1 The Closing. Provided that all conditions precedent set out in this Agreement have been fulfilled, the closing of the purchase of the Assets (the “Closing”) shall be held at the offices of Pilot

Software, 444 Castro Street, Suite 501, Mountain View, California at 1:00 p.m. local time on December 15, 2006, or such other place and time as the Parties shall agree (the "Closing Date").

## 2.2 Items to be Delivered at Closing.

(a) Transfer of Assets. At the Closing, Seller will take all actions reasonably necessary and appropriate to transfer, assign and convey the Assets to Buyer, including execution and delivery of a bill of sale, contract assignments, and other appropriate documents in form and content reasonably satisfactory to Buyer and its counsel. Seller also shall take all such steps as may be required to put Buyer in actual possession and operating control of the Assets.

(b) Payment of Purchase Price. At the Closing, Buyer shall deliver to Seller the sum of US\$130,000; and (ii) deliver to Seller an undertaking by which Buyer assumes and agrees to pay, discharge or perform, as appropriate, Seller's liabilities and obligations to the extent and as provided in Section 1.4(a) in form reasonably satisfactory to Seller and its counsel.

(c) Related Agreements. At the Closing, the Parties shall exchange executed copies of the Transition, Marketing, and License Agreement between the Parties, with the same Effective Date.

(d) Other Documents. At the Closing, the Parties also shall deliver to each other the any other documents required under Section 6 of this Agreement.

2.3 Third Party Consents. To the extent that Seller's rights under any agreement, contract, commitment, lease, or other Asset to be assigned to Buyer under this Agreement may not be assigned without the consent of another person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its best efforts to obtain any such required consent(s) at promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by law and the Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer.

2.4 Further Assurances. Following the Closing, each of the Parties will cooperate with and execute and deliver to the other party such other instruments and documents and take such actions as may be reasonably requested from time to time as necessary to carry out, evidence and confirm the intended purposes of this Agreement. In particular, at Buyer's request, Seller will execute, acknowledge and deliver to Buyer such other instruments of conveyance and transfer, certificate and other documents, and will take such other actions, as Buyer may reasonably require in order to vest more effectively in Buyer, or to put Buyer more fully in possession of, any of the Assets, to obtain permits and licenses required by any governmental agency, or to better enable Buyer to complete or perform any of the liabilities or obligations assumed by Buyer under this Agreement, including the filing of any document with the U.S. Patent and Trademark office or any appropriate foreign body reflecting ownership of Intellectual Property. Both parties agree to keep any and all contracts, books, records, files, and other data for the period of time required by law. Further, Seller has the right at

any time to have access to such contracts, books, records, files, and other data that are transferred and delivered to Buyer, to the extent that such access is necessary due to complete reports to or respond to requests from the relevant authorities.

### 3. REPRESENTATIONS AND WARRANTIES OF SELLER.

Except as set forth in the Seller's Disclosure Schedule dated as of the Effective Date and attached as **Exhibit C**, Seller represents and warrants to Buyer as follows:

#### 3.1 Authority, Approval and Enforceability.

(a)Corporate Existence. Seller is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Seller has all requisite corporate power and authority to own, lease, and operate its properties and to carry on the Business as conducted before the Closing.

(b)Power to Execute Agreement. Seller has, or as of the Closing Date will have, full power and authority to execute, deliver and perform its obligations under this Agreement. All actions of Seller necessary for such execution, delivery and performance, will have been duly taken.

(c)Absence of Conflicts. The execution and delivery by Seller of this Agreement does not, and the completion of the transactions contemplated by this Agreement will not, result in any conflict with, breach of, or termination or forfeiture under (or upon the failure to give notice or the lapse of time, or both, result in any conflict with, breach of, or termination or forfeiture under) any terms or provisions of the charter documents, as amended, of Seller or any statute, rule, regulation, judicial or governmental decree, order, judgment, agreement, lease, loan agreement, debenture, indenture, or mortgage to which Seller is a party or to which any of its assets are subject.

(d)Enforceability. Upon the due execution and delivery by the Parties, this Agreement will be a binding obligation of Seller enforceable against Seller in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

3.2 No Third Party Options. There are no existing agreements, options, commitments or rights with, of or to any person to acquire any of Seller's assets or rights included in the Assets or any interest therein.

3.3 Required Consents and Approvals. Seller's Disclosure Schedule lists all governmental and other third party consents or approvals required to consummate the transactions in this Agreement.

3.4 Title to Assets. Seller has and will transfer to Buyer good and marketable title to the Assets. The Assets are free and clear of restrictions on or conditions to transfer or assignment. The Assets will be transferred to Buyer free and clear of mortgages, liens, encumbrances, claims and restrictions, except as set forth in Seller's Disclosure Schedule and liens for current real or personal property taxes not yet due and payable. Except as set forth in Seller's Disclosure Schedule, the Assets are not held under any leases, security agreements, conditional sales contracts, or other title retention arrangements.

3.5 Intellectual Property Agreements. Seller's Disclosure Schedule sets forth a complete and accurate list of all agreements, written and oral, to which Seller is a party, or of which Seller is aware related to license, franchise, purchase or any other agreement which relates to the ownership, scope or use of the Intellectual Property (the "Intellectual Property Agreements"), excluding all shrink-wrap licenses arising from the purchase or use of off-the-shelf or other similar standard computer software. Such Intellectual Property Agreements include, but are not limited to, any non-disclosure agreements with third parties.

Seller has provided Buyer with complete and accurate copies of all written Intellectual Property Agreements and written summaries of all oral Intellectual Property Agreements. Seller has in all respects performed all the obligations required to be performed by it to date under the Agreements. Neither Seller nor, to the knowledge of Seller, any of the other parties to the Intellectual Property Agreements is in, or alleged to be in, material default under any of the Intellectual Property Agreements, commitments, instruments or obligations, and there exists no event, condition or occurrence which, after notice or lapse of time, would constitute such a material default by Seller of any Intellectual Property Agreement.

3.6 Intellectual Property Rights.

(a) Seller's Disclosure Schedule sets forth a complete and accurate list of Seller's Intellectual Property as defined in Section 1.1(c) above, including but not limited to, all patent rights and pending patent applications, and all trademark rights and pending trademark applications.

(b) Except in each case as set forth in Seller's Disclosure Schedule:

(i) Seller has the exclusive right to use, sell, license, and dispose of the Intellectual Property;

(ii) The execution, delivery and performance of this Agreement will not breach or conflict with any instrument or agreement to which Seller is a party;

(iii) Seller has not received any communications alleging written notice of the violation of any license or agreement with any third party or the infringement of the intellectual property rights of any third party;

(iv) To the best knowledge of Seller, no third party is infringing any of the Intellectual Property; and

(v) Seller has taken reasonable steps necessary or appropriate (including, without limitation, entering into appropriate confidentiality, nondisclosure and non-competition agreements with all officers, directors, subcontractors, employees, licensees and entities that serve Seller) to safeguard and maintain the secrecy and confidentiality of, and establish Seller's proprietary rights in, all of the Intellectual Property.

3.7 Litigation. As of the Effective Date, to the best of Seller's knowledge, there is no suit, action (equitable, legal, administrative or otherwise), proceeding or investigation of any kind pending

or threatened against Seller which would have a material adverse effect on the sale of the Assets pursuant to this Agreement or would materially and adversely affect Buyer's rights in the Assets.

3.8 Brokers. Except as set forth in Seller's Disclosure Schedule, Seller has not dealt with any investment bankers, finders, or brokers in connection with this transaction.

#### 4. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller as follows:

##### 4.1 Approval, Authorization and Enforceability.

(a) Corporate Existence. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Power to Execute Agreement. Buyer has full power and authority to execute, deliver and perform its obligations under this Agreement. All actions of Buyer necessary for such execution, delivery and performance have been, or, as of the Closing Date, will have been duly taken.

(c) Absence of Conflicts. The execution and delivery by Buyer of this Agreement does not, and the performance and consummation of the transactions contemplated by this Agreement will not, result in any conflict with, breach or violation of or default, termination or forfeiture under (or upon the failure to give notice or the lapse of time, or both, result in any conflict with, breach or violation of, or default, termination or forfeiture under) any terms or provisions of the charter documents, as amended, of Buyer, or any statute, rule, regulation, judicial or governmental decree, order, judgment, agreement, lease, loan agreement, debenture, indenture, mortgage or other instrument binding upon Buyer or to which Buyer is a party.

(d) Enforceability. Upon the due execution and delivery by the Parties, this Agreement will be a binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

4.2 Litigation. There is no suit, action (equitable, legal, administrative or otherwise), proceeding or investigation of any kind pending or threatened against Buyer, and there is no factual basis for any such suit, action, proceeding or investigation of which Buyer is aware which could materially affect the ability of Buyer to carry out the transactions contemplated hereunder in accordance with the terms hereof.

4.3 Required Consents and Approvals. All governmental and other third party consents or approvals required to be obtained by Buyer to consummate the transactions contemplated hereby have been obtained and will be provided to Seller prior to Closing.

#### 5. ADDITIONAL AGREEMENTS RELATING TO THE PURCHASE OF ASSETS.

5.1 Cooperation by All Parties. Each party will take all reasonable actions necessary to obtain



(and will cooperate with the other parties in obtaining) any consent, approval, order or authorization of, or any registration, declaration or filing with, any governmental entity or other person required to be obtained or made by Seller or by Buyer in connection with the taking of any action contemplated by this Agreement. No party will take any action that would or might result in any of its representations and warranties set forth in this Agreement becoming untrue or in any of the conditions of the Closing not being satisfied.

5.2 Exclusivity. Seller shall not, directly or indirectly, sell or encumber any part or all of the Assets, other than in the ordinary course of business consistent with past practice, or initiate or participate in any discussions or negotiations or enter any agreement for any sale of assets or any other transaction inconsistent with the transaction set forth in this Agreement.

5.3 Access. Prior to the Closing Date, Seller shall give Buyer's representatives full access to and the right to inspect, during normal business hours, all of the premises, properties, assets, records contracts and other documents relating to the Business or the Assets and shall permit them to consult with Seller's officers, employees, accountants and other agents for the purposes of making such investigation of the Business and Assets as Buyer may reasonably wish to make, provided that such investigation shall not unreasonably interfere with Seller's business operations.

5.4 Press Releases. Except as required by applicable law, no party to this Agreement shall give notice to any third parties or otherwise make any public statement or press release concerning this Agreement or the transactions contemplated by this Agreement, including but not limited to Purchase Price information, except with the prior written approval of the other.

5.5 Confidentiality. Seller will hold in confidence and use reasonable efforts to have all its employees, consultants, agents and representatives hold in confidence and not disclose or use, or permit others to use or disclose, any and all confidential information related to: (a) the Business or the Assets; and (b) the terms of this Agreement. Buyer will hold in confidence and use reasonable efforts to have all its employees, consultants, agents, and representatives hold in confidence and not disclose or use, or permit others to use or disclose, any and all confidential information relating to the terms of this Agreement.

## 6. CONDITIONS TO CLOSING.

6.1 Buyer's Conditions to Closing. The obligations of Buyer under this Agreement are subject to the satisfaction of the following conditions, unless waived by Buyer:

(a) Representations and Warranties True as of the Closing Date. Subject to such modifications to Seller's Disclosure Schedule as shall be approved by Buyer, such approval not to be unreasonably withheld, the representations and warranties of Seller set forth in this Agreement shall have been true and correct in all material respects on the date of this Agreement and shall be true on the Closing Date in all material respects as though made as of such date.

(b) Compliance with this Agreement. Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Government Approvals. All consents, approvals, orders, authorizations,

registrations, declarations and filings with any domestic or foreign governmental entity necessary for the consummation of the transactions contemplated by this Agreement, if any, shall have been obtained or filed.

(d)Third Party Consents. Buyer shall have been furnished with satisfactory evidence of the consent, approval or notification of the entities or individuals listed on **Exhibit D**, whose consent, approval or notification shall be required in order to permit the sale, conveyance and assignment of the Assets and Assumed Liabilities.

(e)No Threatened or Pending Litigation. On the Closing Date, no suit, action or other proceeding, or injunction or final judgement relating thereto, shall be threatened or pending before any court or governmental or regulatory authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the Agreement or the consummation of the transactions contemplated hereby, and no investigation that might result in any such suit, action or proceeding shall be pending or threatened.

(f)Approval of Counsel; Corporate Matters. All actions, proceedings, resolutions, instruments and documents required to carry out this Agreement and all other related legal matters shall have been approved on the Closing Date by counsel for Buyer, in the exercise of their reasonable business judgment. Seller shall have delivered to Buyer such other documents, instruments, certifications and further assurances as such counsel may reasonably require.

6.2Seller's Conditions to Closing. The obligations of Seller under this Agreement are subject to the satisfaction of the following conditions, unless waived by Seller:

(a)Representations and Warranties True as of the Closing Date. The representations and warranties of Buyer set forth in this Agreement shall have been true and correct in all material respects on the date of this Agreement without regard to any updates to Buyer's Disclosure Schedule furnished by Buyer after the date hereof and shall be true on the Closing Date in all material respects as though made as of such date.

(b)Compliance with this Agreement. Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c)Government Approvals. All consents, approvals, orders, authorizations, registrations, declarations and filings with any domestic or foreign governmental entity necessary for the consummation of the transactions contemplated by this Agreement, if any, shall have been obtained or filed.

(d)No Threatened or Pending Litigation. On the Closing Date, no suit, action or other proceeding, or injunction or final judgment relating thereto, shall be threatened or pending before any court or governmental or regulatory authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the Agreement or the consummation of the transactions contemplated hereby, and no investigation that might result in any such suit, action or proceeding shall be pending or threatened.

(e) Approval of Counsel; Corporate Matters. All actions, proceedings, resolutions, instruments and documents required to carry out this Agreement and all other related legal matters shall have been approved on the Closing Date by counsel for Seller, in the exercise of their reasonable business judgment.

## 7. INDEMNIFICATION AND RELATED MATTERS.

7.1 Indemnification of Buyer. Seller will indemnify and hold harmless Buyer and its officers and directors from and against any claims, actions, damage, expense, liability, loss or deficiency including without limitation, reasonable attorneys' fees and other costs and expenses incident to any suit, action, claim or proceeding brought by a third party (collectively, "Damages") arising out of or resulting from:

- (a) any inaccuracy in any representation or the breach of any warranty made by Seller in this Agreement;
- (b) any failure of Seller to perform or observe any term of this Agreement;
- (c) any liabilities or obligations of Seller other than the Assumed Liabilities.

7.2 Indemnification of Seller. Buyer will indemnify and hold harmless Seller from and against any Damages arising out of or resulting from:

- (a) any inaccuracy in any representation or the breach of any warranty made by Buyer in this Agreement;
  - (b) any failure of Buyer to perform or observe any term of this Agreement;
  - (c) the operation of the Business or the ownership of the Assets after Closing;
- or
- (d) the Assumed Liabilities.

7.3 Survival of Representations and Warranties. The representations and warranties of the Parties shall survive until one year after the Closing Date.

## 7.4 Third Party Actions.

(a) All claims for indemnification under Section 7.1 or 7.2 involving third party actions or demands shall be made in accordance with the procedure set forth in this Section 7.4.

(b) Promptly after receipt by an indemnified party of notice of any third party action or demand which gives rise to Damages, such indemnified party shall notify the indemnifying party. Failure so to notify the indemnifying party shall relieve it of any liability that it may have to any indemnified party to the extent that the defense of such action is

materially prejudiced by such failure, provided the indemnifying party did not receive or otherwise have actual notice thereof.

(c) The indemnifying party shall be entitled to participate in the defense of the third party action or demand and, at its option, to assume the defense thereof provided that the indemnifying party confirm that the action or demand is covered by its indemnification obligation. If the indemnifying party receives notice of any action or demand, it shall promptly notify the indemnified party as to whether it intends to control the defense thereof.

(d) If an indemnifying party defends an action, (i) no compromise or settlement thereof may be effected by the indemnifying party without the indemnified party's consent (which shall not be unreasonably withheld) unless the sole relief provided is monetary damages that are paid in full by the indemnifying party and (ii) the indemnified party shall have no liability with respect to any compromise or settlement thereof effected without its consent.

(e) If notice is given to an indemnifying party of the commencement of any action and it does not, within 20 days after the indemnified party's notice is given, give notice to the indemnified party of its election to assume the defense thereof, the indemnified party shall be entitled to assume the defense thereof. In such event, the indemnifying party shall not be bound by any compromise or settlement thereof effected by the indemnified party without its consent, which shall not be unreasonably withheld.

**7.5 Procedure.** Payment of any claim for Damages for which indemnification is due shall be made within 30 days of the date of the claim. If Seller does not object to Buyer's claim for Damages, Buyer may offset the Damages against payments due to Seller under this Agreement. If Seller does object to Buyer's claim for Damages, Buyer may withhold the contested amount from payments due Seller pending resolution of the dispute by agreement or provided that Buyer places the contested amount in an escrow account held by a third party escrow agent reasonably acceptable to Seller with instructions to release the funds to the appropriate party once the dispute is resolved.

**7.6 Compliance with Bulk Sales Laws.** Buyer and Seller hereby waive compliance by Buyer and Seller with the bulk sales law and any other similar laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement. Seller shall indemnify Buyer from, and hold it harmless against, any liabilities, damages, costs and expenses resulting from or arising out of (i) the Parties' failure to comply with any of such laws in respect of the transactions contemplated by this Agreement, or (ii) any action brought or levy made as a result thereof, other than those liabilities which have been expressly assumed, on such terms as expressly assumed, by Buyer pursuant to this Agreement.

**7.7 Other Rights and Remedies Not Affected.** The indemnification rights of the Parties under this Section 7 are independent of and in addition to such rights and remedies as the Parties may have at law or in equity or otherwise for any misrepresentation, breach of warranty or failure to fulfill any agreement or covenant hereunder on the part of any party hereto, including without limitation the right to seek specific performance, rescission or restitution, none of which rights or remedies shall be affected or diminished hereby.

## **8. TERMINATION.**

8.1 Termination. This Agreement may be terminated and abandoned only as follows:

(a) at any time by the written agreement of Buyer and Seller;

(b) by a Party if the other Party is in material breach of this Agreement and fails to cure such breach within 15 days after written notification identifying the breach with particularity.

8.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement (except for Sections 5.4 and 5.5 which shall continue) shall become void and have no effect, without any liability on the part of any of the Parties or their directors, officers, members, or stockholders in respect of the Agreement, unless the termination was the result of the representations and warranties of a party being materially incorrect when made or the material breach by such party of a covenant hereunder in which event the party whose representations and warranties were incorrect or who breached such covenant shall be liable to the other party for all costs and expenses of the other party in connection with the preparation, negotiation, execution and performance of this Agreement.

## 9. MISCELLANEOUS.

9.1 Sales and Use Taxes on the Assets. Buyer will pay the cost of any sales, use, transfer or similar taxes payable in connection with the sale, assignment, and transfer of the Assets.

9.2 Expenses. Each party shall pay its own expenses incidental to the preparation of this Agreement, the carrying out of the provisions of this Agreement and the consummation of the transactions contemplated hereby, including legal, accounting and any investment banker or finder fees or commissions.

9.3 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the day of delivery if delivered in person, if delivered by electronic mail, with confirmation of receipt from the receiving Party or its system, or if delivered by facsimile with confirmation of successful receipt, (b) on the first business day following the date of dispatch if delivered by an internationally-recognized express courier service, or (c) on the third business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices shall be delivered as set forth below, or pursuant to such other instructions as may be designated by notice given in accordance with this Section 8.3 by the Party to receive such notice:.

If to Buyer, to:

Marketwave LLC  
11200 Donner Pass Road, #117  
Truckee, CA 96161  
Attention: Richard Hawkesworth  
Facsimile: (650) 388 4339  
Electronic mail: richard@marketwave.org

If to Pilot, to:

Pilot Software, Inc.  
444 Castro Street, Suite 501

Mountain View, CA 94041  
Attention: Jonathan Becher, Chief Executive Officer  
Facsimile: (650) 230-2114  
Electronic mail: jbecher@pilotsoftware.com

9.4 Entire Agreement; Amendment and Waiver. This Agreement constitutes the entire agreement and supersedes all prior and contemporaneous agreements and understandings, both written and oral, among the Parties with respect to its subject matter. This Agreement may be amended by the Parties only by an instrument in writing signed on behalf of each of the Parties. Terms of this Agreement may be waived only by the party entitled to the benefit thereof by a written instrument duly executed by such party.

9.5 Assignment and Binding Effect. This Agreement may not be assigned prior to Closing by any party whether by operation of law or otherwise without the prior written consent of the other party, and any attempted assignment in contravention of the foregoing will be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties and their respective successors, assigns, executors and administrators.

9.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applied without reference to choice of laws.

9.7 Severability of Provisions. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement shall nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

9.8 No Benefit to Others. This Agreement is for the sole benefit of the Parties and, in the case of Section 7, the other Indemnified Parties, and their heirs, executors, legal representatives, successors and assigns, and shall not be construed to confer any rights on any other persons.

9.9 Specific Performance. The Parties acknowledge that damages would be an inadequate remedy for any breach of the provisions of this Agreement and agree that the obligations of the Parties hereunder shall be specifically enforceable.

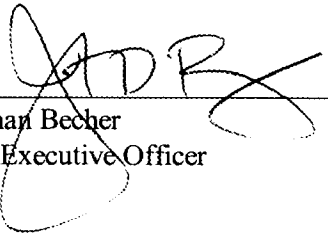
9.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

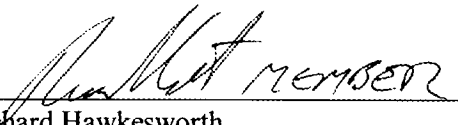
“SELLER”

PILOT SOFTWARE, INC.

By:   
Jonathan Becher  
Chief Executive Officer

“BUYER”

MARKETWAVE LLC

By:   
Richard Hawkesworth  
Member

*[Signature Page to Asset Purchase Agreement]*

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ASSET PURCHASE AGREEMENT

BETWEEN

PILOT SOFTWARE, INC.

AND

MARKETWAVE LLC

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CLOSING DATE: DECEMBER 15, 2006

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**EXHIBITS AND SCHEDULES**

Exhibit A	Schedule of Buyer's Assumed Contracts
Exhibit B	Schedule of Buyer's Assumed Liabilities
Exhibit C	Seller's Disclosure Schedule
Exhibit D	Schedule of Third Party Consents
Schedule 1.5	Allocation of Purchase Price

**SCHEDULE 1.5**

**Allocation of Purchase Price**