

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Asset Purchase Agreement		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Metaserver, Inc.		04/21/2005	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Whitehill Technologies, Inc.		
<b>Street Address:</b>	260 MacNaughton Ave		
<b>City:</b>	MONCTON, New Brunswick		
<b>State/Country:</b>	CANADA		
<b>Postal Code:</b>	E1H 2J8		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	2483885	METASERVER	
<b>Registration Number:</b>	2733611	METASERVER	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(203)327-1096		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	(203) 324-6155		
<b>Email:</b>	ccobb@ssjr.com		
<b>Correspondent Name:</b>	Wesley W. Whitmyer, Jr.		
<b>Address Line 1:</b>	986 Bedford Street		
<b>Address Line 2:</b>	St. Onge Steward Johnston & Reens LLC		
<b>Address Line 4:</b>	Stamford, CONNECTICUT 06905		
<b>ATTORNEY DOCKET NUMBER:</b>	04878-T0001A & T0001B		
<b>DOMESTIC REPRESENTATIVE</b>			
<b>Name:</b>			

**OP \$65.00 2483885**

Address Line 1:  
Address Line 2:  
Address Line 3:  
Address Line 4:

NAME OF SUBMITTER:	Wesley W. Whitmyer Jr.
Signature:	/Wesley W. Whitmyer Jr./
Date:	10/02/2007

**Total Attachments: 34**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of April 21, 2005 by and among METASERVER, INC., a Delaware corporation (the "Seller") and WHITEHILL TECHNOLOGIES, INC., a New Brunswick corporation (the "Purchaser").

### R E C I T A L S:

A. The Seller is engaged in the development and sale of software solutions in the Business Process Integration ("BPI") segment (the "Business").

B. The Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase and acquire from the Seller, certain of the assets of the Seller relating to the operation of the Business, all on the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1: DEFINITIONS

1.1 "Bill of Sale" shall mean the Bill of Sale dated as of the Closing Date evidencing the transfer of the Intangible Property and Specified Equipment from the Seller to Purchaser in the form of Exhibit A hereto.

1.2 "Business" shall have the meaning specified in the Recitals.

1.3 "Closing" shall mean the consummation of the transactions contemplated by this Agreement and any related agreements to be held on the Closing Date.

1.4 "Closing Date" shall mean April 24, 2005, or such other date as may be mutually agreed by Purchaser and Seller.

1.5 "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.6 "Employee Obligations" shall mean any obligation or liability arising in connection with the current or former employment of any person by the Seller, and any other liability or obligation to or in connection with any current, retired, deceased, disabled or former employees of the Seller or their survivors or beneficiaries. Such Employee Obligations include, but are not limited to, payroll or other compensation and taxes related thereto; accrued vacation and bonuses; severance, settlement and noncompetition payments; sick leave payments; insurance, continued insurance or COBRA benefits; bonus plans; and any other employee benefit plans, programs, policies, liabilities or obligations to

current, retired, deceased, disabled or former employees of the Seller or their survivors, and all taxes related thereto.

1.7 “Environmental, Health and Safety Requirements” shall mean all federal, state, local and foreign statutes, regulations and ordinances concerning public health and safety, worker health and safety, and pollution or protection of the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, as such requirements are enacted and in effect on or prior to the Closing Date.

1.8 “Intangible Property” shall mean any and all intangible assets (including all rights to sue for past infringement) owned by the Seller or used in connection with the Business, including, without limitation, all (i) trademarks, service marks, trade dress, logos and trade names together with all translations, adaptations, derivations and combinations thereof and all applications, registrations and renewals in connection therewith, (ii) copyrightable works, copyrights, and all applications, registrations and renewals in connection therewith, (iii) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, reexamination thereof and royalties, (iv) computer software (where applicable, subject to any applicable license or other agreement described in Schedule 4.5 that gives rise to the right of the Seller to use such software), source code, hardware, documentation, designs and all derivations, in any format and all documentation relevant thereto, (v) know-how, processes, technology, blueprints and designs utilized in or incident to the Business as presently conducted or as being developed, (vi) right, title and interest in the name, “Metaserver” and any derivatives or combinations thereof, (vii) the goodwill associated with the Business and the right to carry on the Business as a going concern, and (viii) the Seller’s right, title and interest in any website or webpages, including, without limitation the content, software, applications and documentation related thereto and any domain names and derivatives thereof.

1.9

1.10 “Other Documents” shall mean any and all agreements, statements, certificates, schedules, instruments and other documents required or contemplated hereunder.

1.11

1.12 “Purchase Price” shall have the meaning set forth in Section 2.3.

- 1.13 “Related Agreements” shall mean the Bill of Sale and Patent Assignment.
- 1.14 “Schedules” shall mean the schedules to this Agreement, as referred to herein.
- 1.15 “Specified Equipment” shall mean the computer equipment listed on Schedule 1.15.

## ARTICLE 2: PURCHASE AND SALE OF ACQUIRED ASSETS

2.1 Acquired Assets. Subject to the terms and conditions of this Agreement, Purchaser shall purchase from the Seller, and the Seller shall sell, convey, transfer, deliver and assign to Purchaser, all of the Intangible Property and the Specified Equipment at the Closing free and clear of all Liens in consideration for the Purchase Price. The parties acknowledge that the Intangible Property and the Specified Equipment are the sole assets being purchased pursuant to this Agreement and that no other assets of the Seller are being sold hereby. The Purchaser further acknowledges that the Intangible Property is being sold subject to the existing rights of the Seller’s customers listed on Schedule 2.1 hereto (“Existing Customers”). Purchaser grants Seller a non-exclusive, non-transferable, limited license to continue to use of any elements of the Intangible Property reasonably necessary in order to permit Seller to provide support to the Existing Customers in accordance with the terms of the contracts listed in Schedule 2.1.

2.2 No Liabilities Assumed. Purchaser shall assume no liabilities or obligations of Seller, whether absolute, contingent, known or unknown, determinable or not determinable or otherwise, and whether or not relating to the Intangible Property or the Business.

2.3 Purchase Price.

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2.4 Further Documents and Statements. Seller shall execute and deliver, without further consideration, such documents and instruments in addition to those provided for herein as may be reasonably requested by Purchaser to transfer to and vest in Purchaser title to and possession of the Intangible Property and the Specified Equipment, whether at or after the Closing, including but not limited to such confirmatory conveyances and assignments as may be reasonably requested.

## ARTICLE 3: PURCHASE PRICE AND CLOSING

3.1 Closing. The Closing shall take place on the Closing Date in a manner agreed upon by the parties. All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously, and no proceeding shall be deemed taken nor any document executed and delivered until all have been taken, executed and delivered.

3.2 Payment of the Purchase Price. The Purchase Price shall be payable to or for the account of the Seller by wire transfer or official bank check in accordance with Section 2.3.

3.3 Closing Transactions. At the Closing, subject to all of the terms and conditions of this Agreement:

(a) Purchaser and the Seller will duly execute and deliver the Bill of Sale and any other written instruments evidencing the Seller's conveyance of the Intangible Property and the Specified Equipment;

(b) The Seller will deliver to Purchaser (i) a good standing certificate for the Seller issued as of a date no earlier than 30 days prior to the Closing Date by the Secretary of State of Delaware, and (ii) evidence that all corporate action necessary to be taken to effectuate the transactions contemplated by this Agreement has been taken;

(c) The Seller will deliver to the Purchaser the Patent Assignment in the form attached hereto as Exhibit B (the "Patent Assignment");

(d) Purchaser will deliver to Sellers (i) a good standing certificate for the Purchaser issued as of a date no earlier than 30 days prior to the Closing Date by the Province of New Brunswick, and (ii) evidence that all corporate action necessary to be taken to effectuate the transactions contemplated by this Agreement has been taken;

(e) The parties shall take such other action as may be necessary or appropriate to consummate the transactions provided for, and in accordance with, the terms and conditions of this Agreement.

3.5 Taxes and Utilities. Seller shall be responsible for the payment of all taxes or assessments with respect to the Intangible Property and the Specified Equipment for all periods through the Closing Date. Seller shall be responsible for any sales tax with respect to the transactions contemplated by this Agreement. If after the Closing Date there is an assessment, adjustment or reassessment by any governmental authority, to which Seller is subject, with respect to, or affecting, any taxes for any Intangible Property for the year of the Closing Date or any prior year, any additional tax payment for any Intangible Property or the Specified Equipment required to be paid with respect to all period(s) prior to the Closing Date shall be paid by Seller, and Seller shall pay such additional tax payment directly to the taxing authority within 10 days after receipt of written notice from Purchaser or shall reimburse Purchaser for all such taxes paid by Purchaser to any taxing authority. Purchaser shall be responsible for the payment of all taxes with respect to the Intangible Property and the Specified

Equipment for all periods after the Closing Date (“Post-Closing Taxes”) and shall, within 10 days after receipt of written notice from the Seller, together with appropriate documentation, reimburse the Seller for all such Post-Closing Taxes paid by the Seller to any taxing authority.

#### **ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Purchaser that as of the date hereof and as of the Closing Date:

4.1 Organization and Good Standing. The Seller is a corporation duly organized and validly existing under the laws of the State of Delaware. The Seller is duly qualified as a foreign corporation in each jurisdiction in which the character of the properties owned or leased by it or the nature of its business requires such qualification, except where the failure to so qualify would not have a material adverse effect upon the Intangible Property and the Specified Equipment.

4.2 Due Authorization, Binding Obligation. Seller has all requisite power, capacity and authority to enter into this Agreement and to perform its obligations hereunder and the Seller has authorized the execution, delivery and performance of this Agreement by all necessary corporate action. This Agreement has been duly executed and delivered by Seller and is the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms.

4.3 Governmental Approval. The execution, delivery and performance of this Agreement by the Seller and the consummation of the transactions provided for herein are not subject to the jurisdiction, approval or consent of any governmental, regulatory or administrative agency.

4.4 No Approvals or Notices Required; No Conflict with Other Instruments. Except as described on Schedule 4.4, the execution, delivery and performance of this Agreement by the Seller and the consummation of the transactions contemplated hereby will not (a) violate (with or without the giving of notice or the lapse of time or both) or require any consent or approval, filing or notice under (i) any provision of law or of the Seller’s Certificate of Incorporation or bylaws, or (ii) any indenture, mortgage, deed of trust, lease, license agreement, contract, instrument or other agreement, or any order, judgment or decree to which the Seller is a party and in any case which would impair Purchaser’s ownership or use of the Intangible Property and the Specified Equipment after the Closing or (b) result in the creation of any Lien.

4.5 Title. Except as set forth on Schedule 4.5, the Seller has good and marketable title to all of the Intangible Property and the Specified Equipment, free and clear from all Liens.

4.6 Environmental Matters. The Intangible Property and the Specified Equipment and all real property used in the Business are in compliance in all material respects, and the Business and the Seller have been operated in compliance in all material respects, with all applicable Environmental, Health and Safety Requirements. Seller has not received any written notice, report or other information, and has no knowledge of any facts that might result in the receipt of any written notice, report or other information, regarding any actual or alleged violation of Environmental, Health and Safety Requirements, or any liabilities or potential liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to

the Seller, the Business, the Intangible Property, the Specified Equipment or any real property used in the Business arising under Environmental, Health and Safety Requirements, the subject of which would have an adverse effect on the Intangible Property or the Specified Equipment.

4.7 Tax Matters. The Seller has filed all federal, state and local tax and other returns and reports relating to the Business, the Specified Equipment or the Intangible Property required to be filed on or before the Closing Date; all information reported on such returns is true, accurate and complete; and the Seller has paid or accrued (i) any and all taxes shown to be due on such returns and reports, including, without limitation, those due in respect of properties, income, franchises, licenses, sales and payrolls, (ii) all deficiencies and assessments of taxes of which notice has been received by Seller that are or may become payable by Purchaser as a lien upon the Intangible Property or the Specified Equipment and (iii) all other taxes due and payable on or before the Closing Date for which neither filing of tax returns or reports nor notice of deficiency or assessment is required, of which Seller is or should be aware that are or may become a Lien upon the Intangible Property or the Specified Equipment.

4.8 Legal Proceedings. There are no legal actions, suits or proceedings (governmental or otherwise) pending or, to the knowledge of Seller, threatened against or relating to the Seller, the Business, the Specified Equipment or the Intangible Property. Seller is not a party to any suit, action or proceeding pending, or to Seller's knowledge, threatened which will prohibit, impair or affect Seller's ability to complete the transactions contemplated hereby.

4.9 Intellectual Property. Schedule 4.9 sets forth all patents, trademarks, copyrights, service marks and trade names, all applications for any of the foregoing, and all permits, grants, franchises and licenses or other rights running to or from the Seller relating to any of the foregoing (the "Intellectual Property"), all of which are included as part of the Intangible Property. The rights of the Seller in and to the Intellectual Property are valid and enforceable and useable by the Seller free and clear of any claims or rights of others. All trade secrets, know-how, processes, technology, computer software, blueprints and designs used by the Seller in or incident to the Business as presently conducted or as being developed do not infringe on or otherwise violate any patent, trademark, service mark, trade name or other intellectual property right of any third party and Seller has not received any notice of any adversely held patent, invention, trademark, copyright, service mark, trade name or other intellectual property right of any third party. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the loss or impairment of any of the Intellectual Property or the Seller's rights thereto.

4.10 Additional Representations. Computer software which constitutes part of the Intangible Property does not contain (A) any software that contains, includes, incorporates, or has instantiated therein, or is derived in any manner (in whole or in part) from, any software that is licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) GNU's General Public License (GPL); (ii) the Artistic License (*e.g.*, PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); or (vi) the Sun Industry Standards License (SISL), or (B) software viruses, time or logic bombs, Trojan horses, worms, timers, clocks, trap doors or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a



computer system or any component of such computer system, including, without limitation, its security or user data, or otherwise cause such software to become inoperable or incapable of being used in accordance with its intended purpose. Seller has secured valid written assignments from all consultants, contractors, agents, employees, and other parties who contributed to the creation or development of the Intangible Property of the rights to such contributions that Seller does not already own by operation of law. Each former and current employee, officer, contractor, or consultant of Seller who contributed to the creation or development of Intangible Property has executed a proprietary information and inventions agreement that transferred to Seller ownership of any portion of the Intangible Property that such person developed. None of any Seller's employees, officers, agents, or consultants is in violation of such proprietary information and inventions agreement, and Seller has no reason to believe otherwise. Any licence granted by Seller to its customers as disclosed in Schedule 2.1 is by its terms not sublicensable and is restricted to internal business use by such customer; provided that for avoidance of doubt, this sentence does not apply to the Pervasive License.

4.11 No Brokers. Except as set forth on Schedule 4.11, Seller has not incurred any obligation or liability, contingent or otherwise, for broker's or finder's fees or agent's commissions or like payments in connection with this Agreement or the transactions contemplated hereby.

#### **ARTICLE 5: REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to Seller that as of the date hereof and as of the Closing Date:

5.1 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Province of New Brunswick and has all requisite corporate power and authority to own, operate, lease and use its properties and assets and to carry on its business as it is now being conducted.

5.2 Due Authorization: Binding Obligation. Purchaser has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. Purchaser has authorized the execution, delivery and performance of this Agreement by all necessary corporate action, and this Agreement has been duly executed and delivered by Purchaser and is the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

5.3 Governmental Approval. The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions provided for herein are not subject to the jurisdiction, approval or consent of any governmental, regulatory or administrative agency.

5.4 No Approvals or Notices Required; No Conflict with Other Instruments. The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby will not violate (with or without the giving of notice or the lapse of time or both) or require any consent or approval, filing or notice under any provision of law, and will not require any consent, approval or notice under and will not conflict with, or result in the breach or termination of any provision of, or constitute a default under, or result in the acceleration of the performance of the obligations of Purchaser under its Articles of Incorporation or Bylaws or pursuant to any indenture,

mortgage, deed of trust, lease, license agreement, contract, instrument or other agreement, or any order, judgment or decree to which Purchaser is a party or by which Purchaser is bound.

5.5 No Brokers. Purchaser has not incurred any obligation or liability, contingent or otherwise, for brokerage or finder's fees or agent's commissions or like payments in connection with this Agreement or the transactions contemplated hereby.

## ARTICLE 6: COVENANTS OF SELLER

Seller covenants as follows:

6.1 Negative Covenants. From the date hereof to the Closing Date, the Seller will not, except with the prior written consent of Purchaser:

(a) Take any action or omit to take any action that would result in a breach of any of the representations and warranties set forth in Article 4 hereof as if they had been made as of the Closing Date;

(b) Enter into any agreement relating to the Intangible Property;

(c) Institute, settle or agree to settle any litigation, action or proceeding before any court or governmental body that in any way adversely affects the Intangible Property;

(d) Take any action that would interfere with or prevent performance of this Agreement; or

(e) Allow to exist any Lien against the Intangible Property, except for those listed on Schedule 6.1(e) (which Liens shall have been removed as of the Closing Date).

6.2 No Solicitation. From the date hereof through the Closing Date, or such earlier date as this Agreement is terminated, Seller shall not directly or indirectly, through any director, shareholder, employee, accountant or other agent or representative of the Seller or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other person relating to the sale of the Intangible Property, whether through direct purchase, merger, consolidation or other business combination (other than customer sales in the ordinary course).

6.3 Notice of Adverse Changes. From the date hereof through the Closing Date, Seller shall promptly notify Purchaser in writing of (a) any material adverse change in the Business or any of the Intangible Property or the Specified Equipment, (b) any pending or threatened action, suit, claim or proceeding applicable to the Intangible Property or the Specified Equipment, and (c) the occurrence of any event that could result in any condition to the Closing not being satisfied by Seller. Seller shall keep Purchaser reasonably informed as to the status of such reported events.

6.4 Access to Facilities, Records, Employees Etc. Between the date hereof and the Closing Date, Seller shall give or cause to be given to the authorized representatives of Purchaser full access at

all reasonable times, for purposes of its due diligence investigations, to all of the facilities and properties of the Seller used in connection with the Business and to all of the Seller's books, records, documents and files of every character related to the Intangible Property; provided, however, that Purchaser and its representatives shall use all reasonable efforts to minimize any interference with respect to such investigation on the operations of the Business. Purchaser and its authorized representatives shall be entitled to make copies of such books, records, documents and files or other information requested by Purchaser and related to the business operations of the Seller. Seller shall reasonably cooperate with Purchaser in conducting such investigation and promptly upon Purchaser's request shall also provide Purchaser and its authorized representatives reasonable access to the Seller's employees during normal business hours to the extent reasonably deemed by Purchaser to be necessary in connection with its due diligence investigations. Such employees shall be instructed to cooperate with Purchaser and to provide such information as Purchaser and its authorized representatives may reasonably request. Purchaser will, and will cause its directors, officers, employees, agents and representatives to, keep all information obtained pursuant to such investigations confidential and shall return such information promptly in the event the transactions contemplated hereby are not consummated.

#### **ARTICLE 7: CONDITIONS TO OBLIGATIONS OF SELLER**

The obligations of Seller under this Agreement shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

7.1 Purchaser's Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement and in any Related Agreement or Other Document shall be true and correct as of the Closing Date, with the same force and effect as if made as of the Closing Date.

7.2 Covenants and Conditions. Purchaser shall have duly performed and complied fully with all covenants, agreements and obligations required by this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date.

7.3 Execution and Delivery Requirements. Purchaser shall have satisfied its execution and delivery requirements for the Closing as set forth in Article 3 hereof including the delivery of the Purchase Price payable at Closing.

7.4 Waiver by Seller. Seller may at its option waive in writing the performance of any of the covenants and conditions imposed hereunder.

#### **ARTICLE 8: CONDITIONS TO OBLIGATIONS OF PURCHASER**

The obligations of Purchaser under this Agreement shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

8.1 Seller's Representations and Warranties. The representations and warranties of Seller contained in this Agreement, the Related Agreements and in any Other Document shall be true and correct as of the Closing Date, with the same force and effect as if made as of the Closing Date.

8.2 Covenants and Conditions. Seller shall have duly performed and complied fully with all covenants, agreements and obligations required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date.

8.3 No Litigation or Governmental Proceeding. No action or proceeding shall have been instituted before any court or governmental body by any third party to restrain or prohibit, or to obtain damages in respect of, the consummation of the transactions contemplated by this Agreement. No party to this Agreement shall have received written notice from any governmental body of (i) its intention to institute any action or proceeding to restrain or enjoin or nullify this Agreement or the transactions contemplated hereby, or to commence any investigation into the consummation of the transactions contemplated by this Agreement or (ii) the actual commencement of such an investigation.

8.4 Consents and Approvals. All consents, approvals, authorizations and filings required to be obtained or made for the valid and effective transfer to Purchaser of the Intangible Property and the Specified Equipment and consummation of the transactions contemplated by this Agreement shall have been obtained or made.

8.5 Termination of Liens. Any Liens on the Intangible Property and the Specified Equipment shall have been terminated.

8.6 Execution and Delivery Requirements. Seller shall have satisfied its execution and delivery requirements for the Closing as set forth in Article 3 hereof, including the execution and delivery of the Related Agreements.

8.7 Acceptance of Designated Employees. The Designated Employees referred to in Section 9.4 shall have entered into consulting or employment agreements with the Purchaser in order to facilitate the knowledge transfer described therein.

8.8 Waiver by Purchaser. Purchaser may at its option waive in writing the performance of any of the covenants and conditions imposed hereunder.

8.9 Licenses to Embedded Technologies. Purchaser shall have assumed or entered into licenses on terms satisfactory to it with respect to the technologies embedded in the Intangible Property set forth on Schedule 4.5.

8.10

## ARTICLE 9: ADDITIONAL COVENANTS AND AGREEMENTS

9.1 Further Assurances. Each party shall for no further consideration perform all such other actions and execute, acknowledge and deliver and cause to be executed, acknowledged and delivered such assignments, transfers, consents and other documents as the other party may reasonably request to vest in the requesting party and protect the requesting party's respective rights, title and interest in and enjoyment of the benefits of the transactions contemplated by this Agreement.

9.2 Access; Mail. From time to time following the Closing Date, upon the reasonable request of Purchaser or Seller, Seller and Purchaser shall afford the other party and its authorized representatives access to their respective corporate records, general ledgers and tax returns only to the extent reasonably necessary for their respective business, tax, accounting or legal purposes, and shall permit the other party to make copies thereof at such party's sole expense. From and after the Closing Date, Seller will promptly forward to Purchaser any mail or email sent to Seller which appears to relate to matters arising with respect to the Intangible Property and the Specified Equipment. From and after the Closing Date for a period of six months, Purchaser will promptly forward to Seller any email sent to metaserver.com email addresses related to the Business previously conducted by the Seller.

9.3 Use of Name. Seller shall at the Closing transfer to Purchaser all of its right to, and title and interest in, the name "Metaserver" and all derivatives thereof, and thereafter shall cease to use or license the name "Metaserver" and any derivations thereof in connection with the Business or any business substantially similar thereto, provided, that Seller shall be permitted to continue to use the corporate name Metaserver, Inc. provided that such entity is dissolved a reasonable period of time following the Closing.

9.4 Employees. Prior to the Closing, Purchaser shall have entered into consulting or employment agreements with each person listed on Schedule 9.4 hereto who is or was a full time or part time employee of the Seller prior to the Closing (the "Designated Employees") for a period of at least 6 months in order to facilitate the transfer of the Intangible Property to the Purchaser. Nothing contained herein, express or implied, is intended to confer upon any Designated Employee any right to continued employment for any period by reason of this Agreement. Nothing contained herein is intended to confer upon any Designated Employee any particular term or condition of employment. Purchaser shall have no liability for Employee Obligations and Seller shall have no responsibility whatsoever for the actions or inactions of the Designated Employees following the Closing.

9.5 Best Efforts. Each of the parties hereto shall use its best efforts to cause all conditions precedent to its obligations under this Agreement to be satisfied.

## ARTICLE 10: INDEMNIFICATION

10.1 Indemnification by Seller. Subject to the terms, conditions and limitations contained in this Article 10, Seller shall indemnify, defend and hold harmless Purchaser, its officers and directors, and their respective successors and assigns, against all losses, damages, demands, claims, assessments, actions, tax deficiencies, penalties, interest, reasonable attorneys' fees, and other costs and expenses (collectively, the "Indemnified Losses") arising out of, or incident to, any of the following:

- (a) any representation or warranty made by Seller herein or in any Related Agreement or Other Document shall be untrue as of the date hereof or as of the Closing Date;
- (b) any failure by Seller to perform or fulfill Seller's covenants or agreements set forth herein or in any other agreement or document executed in connection with the transactions contemplated hereby; and
- (c) any liability of Seller.

10.2 Indemnification by Purchaser. Subject to the terms, conditions and limitations contained in this Article 10, Purchaser shall indemnify, defend and hold harmless each of Seller, its respective officers and directors, and their respective successors and assigns, against all Indemnified Losses arising out of, or incident to, any of the following:

- (a) any representation or warranty made by Purchaser herein or in any Related Agreement or Other Document shall be untrue as of the date hereof or as of the Closing Date; and
- (b) any failure by Purchaser to perform or fulfill any of Purchaser's covenants or agreements set forth herein or in any other agreement or document executed in connection with the transactions contemplated hereby.

10.3 Notice of Claims. All claims for indemnification hereunder shall be resolved in accordance with the following procedures:

- (a) If Purchaser or Seller, as appropriate, have incurred or reasonably believe that they may incur any Indemnified Loss (the "indemnified party"), they shall deliver promptly written notice to the other (the "indemnifying party") setting forth in reasonable detail the nature and amount of the Indemnified Loss or potential Indemnified Loss, if possible, and further referencing the sections of this Agreement upon which the claim for indemnification for such Indemnified Loss is based (a "Claim Notice"). If an indemnified party receives notice of a third-party claim for which it intends to seek indemnification hereunder, it shall give the indemnifying party prompt written notice of such claim, so that the indemnifying party's defense of such claim under Section 10.5 hereof may be timely instituted.
- (b) If, after receiving a Claim Notice for an Indemnified Loss, the indemnifying party desires to dispute such claim or the amount claimed in the Claim Notice, it shall deliver to the indemnified party, a written objection to such claim or payment setting forth the basis for disputing such claim or payment. Such notice shall be delivered within 30 days after the date the Claim Notice to which it relates is received by the indemnifying party. If no such notice is received within the aforementioned 30-day period, the indemnified party shall be entitled to payment for such Indemnified Loss from the indemnifying party within 10 days of the end of such 30-day objection period.

(c) If within 30 days after receipt by an indemnified party of the objection notice to a Claim Notice the parties shall not have reached agreement as to the claim or amount in question, the claim for indemnification shall be submitted to arbitration at Boston, Massachusetts, or such other location as the parties may agree, pursuant to the Commercial Rules (the "Rules") of the American Arbitration Association ("AAA") by an arbitrator mutually agreed upon by the parties. Such arbitrator shall be selected by the parties hereto no later than 10 days after AAA notifies each party that a demand for arbitration has been filed ("Arbitrator Designation Period"). In the event Purchaser and Sellers are unable to agree on an arbitrator within the Arbitrator Designation Period, AAA shall appoint a neutral arbitrator in accordance with the Rules no later than 10 days following the expiration of the Arbitrator Designation Period. The designated arbitrator shall not be an agent, employee, member or affiliate of the Purchaser or Sellers. The arbitrator may, in his or her discretion, award to the prevailing party its costs of the proceeding, including attorneys' fees and expenses. The decision of the arbitrator shall be final and binding on the parties, and judgment upon the decision may be entered in the state courts or federal courts having jurisdiction over the parties.

10.4 Right of Set-Off. Purchaser, on the one hand, and Seller, on the other hand, shall have the right to reduce and set-off against any amounts payable to one another under this Agreement any Indemnified Losses pursuant to and in accordance with this Article 10, however and whenever arising.

10.5 Defense of Third-Party Claims. The indemnifying party under this Article 10 shall have the right to conduct and control through counsel of its own choosing, which counsel shall be reasonably acceptable to the indemnified party, any third-party claim, action or suit, but the indemnified party may, at its election, participate in the defense of any such claim, action or suit at its sole cost and expense. Except with the prior written consent of the indemnified party, no indemnifying party, in the defense of such claim or litigation, shall consent to entry of any judgment or order, interim or otherwise, or enter into any settlement that provides for injunctive or other nonmonetary relief affecting the indemnified party or that does not include as an unconditional term thereof the giving by each claimant or plaintiff to such indemnified party of a release from all liability with respect to such claim or litigation.

10.6 Failure to Defend. In the event that the indemnifying party does not elect to defend against any third-party claim, the indemnified party may defend against, settle or otherwise deal with any such claim in such manner as it may in its good faith discretion deem appropriate, and, to the extent provided in this Article 10, the indemnifying party shall be liable for indemnification with respect to such matter, including, without limitation, any legal expenses reasonably incurred in connection with such defense.

10.7 Cooperation. In the event of any claim by a third party, Seller and Purchaser will cooperate fully with each other in connection with the defense or settlement of such matter.

10.8 Survival of Representation, Warranties, Covenants and Agreements. The representations, warranties, covenants and agreements of Sellers and Purchaser set forth in this Agreement shall survive the Closing and shall remain in full force and effect for a period of eighteen (18) months following the Closing Date.

10.9 Limitation on Indemnification.

(a) In the absence of fraud, the Seller shall have no liability (for indemnification or otherwise) with respect to claims for breach of representations or warranties under Section 10.1(a) until and to the extent the total of all Indemnified Losses with respect to such matters exceeds ten thousand dollars (\$10,000) (the "Basket Amount"). The Seller shall have no liability with respect to claims for breach of representations or warranties under Section 10.1(a) to the extent that Indemnified Losses with respect to such matters, in the aggregate, exceed the Purchase Price.

(b) In the absence of fraud, the Purchaser shall have no liability (for indemnification or otherwise) with respect to claims for breach of representations or warranties under Section 10.2(a) until and to the extent the total of all Indemnified Losses with respect to such matters exceeds the Basket Amount. The Purchaser shall have no liability with respect to claims for breach of representations or warranties under Section 10.2(a) to the extent that Indemnified Losses with respect to such matters, in the aggregate, exceed the Purchase Price.

10.10 Exclusive Remedy. Any claim or cause of action (whether such claim sounds in tort, contract or otherwise and including statutory rights and remedies) based upon, relating to or arising out of this Agreement or the transactions contemplated hereby or otherwise in respect of the status, operations, condition or ownership of the Seller, its business or properties on or prior to the Closing Date, must be brought in accordance with the provisions and applicable limitations of this Article 10, which in the absence of fraud shall constitute the sole and exclusive remedy of the parties and their affiliates, successors and assigns for any such claim or cause of action.

10.11 Calculation of Damages. The amount of Indemnified Losses payable by an indemnifying party under this Article 10 shall be reduced by (a) any insurance proceeds received by the indemnified party with respect to the claim for which indemnification is sought, after giving effect to retrospective premium adjustments and similar charges, (b) any amounts recovered from any third parties, by way of indemnification or otherwise, with respect to the claim for which indemnification is sought, less the cost of such recovery, and (c) the net after-tax amount of any tax benefits realized by the indemnified party to the extent the claim for which indemnification is sought gives rise to a deductible loss or expense.

**ARTICLE 11: GENERAL PROVISIONS**

11.1 Expenses. Except as otherwise specifically provided in this Agreement, each party hereto shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including, without limitation, accounting and legal fees incurred in connection therewith.

11.2 Successors and Assigns. This Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns but shall not be assignable by any party hereto without the prior written consent of the others.

11.3 Termination. This Agreement may be terminated at any time prior to the Closing: (a) by mutual written consent of Purchaser and Seller, properly authorized by their respective boards of directors; (b) by either Purchaser or Seller, if the Closing shall not have occurred on or prior to April 30,



2005 (or such later date as shall have been consented to by all parties hereto), unless such failure of such occurrence shall be due to the failure of the party seeking to terminate this Agreement to perform or observe the covenants, agreements and conditions hereof to be performed or observed by such party at or before the Closing or to use its reasonable efforts to obtain all third party consents or actions required as a condition to Closing; or (c) by Purchaser, on the one hand, or Seller, on the other hand, if a condition to such party's obligations to close hereunder is not satisfied as a result of the other party's failure to perform or observe the covenants, agreements and conditions hereof to be performed or observed by such party at or before the Closing. In the event of a termination of this Agreement for any breach of this Agreement by Purchaser or by Seller, the injured party may seek any remedies available to it, including claims for damages, specific performance or injunctive relief.

11.4 Confidentiality. All information disclosed heretofore or hereafter by Purchaser, on the one hand, or Seller, on the other hand, to the other in connection with this Agreement shall be kept confidential by such other, and shall not be used by such other otherwise than in connection with this Agreement, except to the extent it was known when received or as it is or hereafter becomes lawfully obtainable from other sources, or to the extent that such duty as to confidentiality and nonuse is waived, or except as may be required by court order or any governmental agency. Such obligation as to confidentiality and nonuse shall survive any termination of this Agreement. In the event of termination of this Agreement, Purchaser and Seller shall use all reasonable efforts to return upon request to the other (or destroy) all documents (and reproductions thereof) received from the other (and, in the case of reproductions, all such reproductions made by the receiving party) that include information not within the exception contained in the first sentence of this Section 11.4.

11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the internal, substantive laws of the Province of New Brunswick. The United Nations Convention for the International Sale of Goods is hereby expressly excluded.

11.6 Amendments, Waivers, Etc. No amendment, modification or discharge of this Agreement, and no waiver of any condition or the breach of any provision, term, covenant, representation or warranty hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement, and shall not impair the rights of the party granting such waiver in any other respect or at any other time. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right at a later date to enforce the same or to enforce any future compliance with or performance of any of the provisions hereof.

11.7 Entire Agreement. This Agreement, together with the Related Agreements and Other Documents, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes and cancels any and all prior agreements and understandings, both written and oral, among them relating to the subject matter hereof.

11.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile or other electronic delivery, which shall be valid and binding for all purposes.

11.9 Notices. All notices, demands and other communications that are required or permitted to be given hereunder or with respect hereto shall be in writing, shall be given either by personal delivery, by nationally recognized overnight courier or by telecopy and shall be deemed to have been given or made upon receipt when personally delivered, when deposited with charges prepaid with the nationally recognized overnight courier, or when transmitted on telecopy machine, addressed to the respective parties as follows:

(a) If to Seller:

Metaserver, Inc.  
Attention: Richard Schultz  
400 Sackett Point Road  
North Haven, CT 06473  
USA  
Telephone: (203) 248-5200  
Fax: (203) 230-4893

In each case, with a copy to:

Wiggin and Dana LLP  
Attention: Michael Grunde  
400 Atlantic Street  
Stamford, Connecticut 06901  
USA  
Telephone: (203) 363-7630  
Fax: (203) 363-7676

(b) If to Purchaser:

Whitehill Technologies, Inc.  
Attention: Paul McSpurren  
260 MacNaughton Avenue  
Moncton, New Brunswick E1H 2J8  
Canada  
Telephone: (506) 855-0005  
Fax: (506) 852-3212

With a copy to:

Stewart McKelvey Stirling Scales

Attention: Peter M. Klohn  
10<sup>th</sup> Floor Brunswick House  
44 Chipman Hill  
P.O. Box 7289  
Postal Station A  
Saint John, New Brunswick E2L 4S6  
Canada  
Telephone: (506) 632-2788  
Fax: (506) 634-3573

Any party may by notice change the address to which notice or other communications to it are to be delivered or mailed.

11.10 No Third Party Beneficiaries. Nothing in this Agreement expressed or implied, is intended to confer on any person other than the parties hereto or their respective personal representatives, heirs, successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

11.11 Headings; Construction. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Throughout this Agreement, the masculine gender shall be deemed to include the feminine and the neuter, the singular the plural, and the plural the singular, all as the context may require.

11.12 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.

11.13 Press Release. Notwithstanding Section 11.4 hereof, Purchaser shall have the right to issue a customary press release announcing the substance (but not the economic terms) of the transaction set forth in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

**PURCHASER:**

WHITEHILL TECHNOLOGIES, INC.

By \_\_\_\_\_

Name:

Title:

**SELLER:**

METASERVER, INC.

By \_\_\_\_\_

Name: Richard K. Schultz

Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

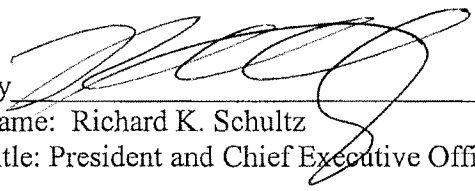
**PURCHASER:**

WHITEHILL TECHNOLOGIES, INC.

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

**SELLER:**

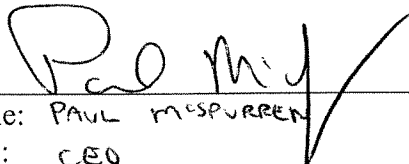
METASERVER, INC.

By  \_\_\_\_\_  
Name: Richard K. Schultze  
Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

**PURCHASER:**

WHITEHILL TECHNOLOGIES, INC.

By   
Name: PAUL McSPURREN  
Title: CEO

**SELLER:**

METASERVER, INC.

By \_\_\_\_\_  
Name: Richard K. Schultz  
Title: President and Chief Executive Officer

## SCHEDULES AND EXHIBITS

Schedule 1.15	Specified Equipment
Schedule 2.1	Customer Contracts
Schedule 4.4	Approvals
Schedule 4.5	Embedded Technology Licenses
Schedule 4.9	Intellectual Property
Schedule 4.11	Brokers
Schedule 6.1(e)	Liens
Schedule 9.4	Designated Employees

Exhibit A	Bill of Sale
Exhibit B	Patent Assignment

**DISCLOSURE SCHEDULE**

**TO**

**ASSET PURCHASE AGREEMENT  
(THE "AGREEMENT")**

**BETWEEN**

**METASERVER, INC.  
(THE "COMPANY")**

**AND**

**WHITEHILL TECHNOLOGIES, INC.**

**April 21, 2005**

This Disclosure Schedule is furnished by the Company to Whitehill Technologies, Inc. as of the 21st day of April, 2005 pursuant to and as part of the Agreement. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Agreement. This Disclosure Schedule relates to certain matters concerning the disclosures required and transactions contemplated by the Agreement. This Disclosure Schedule is qualified in its entirety by reference to the specific provisions of the Agreement.

Headings have been inserted to the Sections of this Disclosure Schedule for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the Sections as set forth in the Agreement.



Schedule 1.15      Specified Equipment

Laptops

Engineering Build and preQA Test machines

QA Lab machines

Servers

Additional Hardware



Schedule 2.1 Customer Contracts

<i>Agreement Name</i>	<i>Other Party</i>
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<i>Agreement Name</i>	<i>Other Party</i>
-----------------------	--------------------

<i>Agreement Name</i>	<i>Other Party</i>

**Schedule 4.4**

**Schedule 4.5**

**Schedule 4.9**            **Intellectual Property**

**ARTICLE 12:**            Patents

On February 25, 1998, the Company filed U.S. Patent Application No. 09/030,258 entitled "Method and Apparatus for Event-Driven Processing Data" (the U.S. '258 Application). An assignment of the U.S. '258 Application to the Company was executed by the inventors Kenneth Schultz, Howard Gilbert, and Ashish Deshpande, and was recorded by the U.S. Patent and Trademark Office on March 20, 1998 at reel 009036, frame 0956. The U.S. '258 Application issued as United States Patent No. 6,862,732 on March 1, 2005.

On February 5, 1999, the Company filed International Application No. PCT/US99/02545 entitled "Event-Driven Processing of Data" (the PCT '545 Application), which claims priority to the U.S. '258 Application. The PCT '545 Application published as International Publication No. WO 99/44136 on September 2, 1999, and has entered the "national phase" of the Patent Cooperation Treaty process in the following countries/regions:

Foreign Equivalents of Metaserver US Patent 6,862,732  
All are pending patent applications.  
All have a filing date of February 5, 1999

<u>Country/Region</u>	<u>Application Number</u>
Europe	99906760.6
Canada	2321861
Hong Kong	01104123.1
Israel	137973
India	194,110
Japan	2000-533819

**ARTICLE 13:**

**ARTICLE 14:** Trademarks

The Company has the following registered United States trademarks:

METASERVER (and Design), Reg. No. 2483885, Registered August 28, 2001 (Class 9).  
METASERVER (and Design), Reg. No. 2733611, Registered July 8, 2003 (Class 42).  
METASERVER, Reg. No. 2242185, Registered April 27, 1999 (Class 9).

An applications for the following trademark was filed with the U.S. Patent and Trademark Office Principal Register under International classes 9 and 42:

METASERVER (and Design), Serial No. 75-524327, filed November 30, 2004.

The Company also has made the following state trademark filings:

METASERVER, (Reg. No. 28842) – New York  
METASERVER, (Reg. No. 21734) – Connecticut

The Company claims the following common law trademarks:

METATASK  
METALINK  
METASERVE  
METASERVER WEB ROUTER  
BUSINESS TRANSFORMATION ENGINE  
POWER THE PROCESS

**(i) Copyrights**

The Company holds a copyright on its MetaServer software.



**(ii) Domain Names**

The Company has registered the following domain names NSI on the world wide web:

METASERVER.COM  
METASERVERINC.COM  
MSERVER.COM  
METASERVER.NET

**Schedule 4.11**

**Schedule 6.1(e)**

**Schedule 9.4**

**Exhibit B**

**ASSIGNMENT**

WHEREAS, **Metaserver, Inc.** (METASERVER), a corporation organized and existing under the laws of the State of Delaware, is the owner of the entire right, title and interest to and under the following United States Patent:

US Patent No.  
6,862,732

Issue Date  
March 1, 2005

which interest has been recorded in the United States Patent and Trademark Office on March 20, 1998 at reel and frame number 009036/0956.

WHEREAS, **Whitehill Technologies, Inc.** (WHITEHILL), a corporation organized and existing under the laws of the Province of New Brunswick, Canada, is desirous of obtaining the entire right, title and interest in, to and under the United States Patent set forth above (the "United States Patent").

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, METASERVER has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto WHITEHILL, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the United States Patent and all divisions, renewals and continuations thereof, and all Letters Patent of the United States which may be granted thereon and all reissues, reexaminations and extensions thereof, all rights under the International Convention and Patent Cooperation Treaty and other international treaties, and all applications for Letters Patent which have been or may hereafter be filed claiming priority to the United States Patent in any country or countries foreign to the United States, and all Letters Patent which may be granted in any country or countries foreign to the United States and all extensions, renewals, reissues and reexaminations thereof; and all damage awards resulting from infringement by third parties prior to the date hereof; and WHITEHILL hereby authorizes and requests the Commissioner of Patents of the United States and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patent to WHITEHILL, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND METASERVER HEREBY covenants that it has full right to convey the entire interest herein assigned, and that it has not executed, and will not execute, any agreement in conflict herewith.



PROVINCE OF \_\_\_\_\_ )  
 )-ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
Notary Public

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