

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Mayfare Software Solutions, L.L.C.		10/29/2004	LIMITED LIABILITY COMPANY: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Peak Performance Solutions, Inc.		
<b>Street Address:</b>	10639 Welch Road		
<b>City:</b>	Orient		
<b>State/Country:</b>	OHIO		
<b>Postal Code:</b>	43146		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2173778	IS4W	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(216)241-0816		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	(216) 622-8672		
<b>Email:</b>	ipdocket@calfee.com		
<b>Correspondent Name:</b>	Timothy J. Connors		
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<b>Address Line 2:</b>	1400 KeyBank Center		
<b>Address Line 4:</b>	Cleveland, OHIO 44114		
<b>ATTORNEY DOCKET NUMBER:</b>	31009/04013		
<b>NAME OF SUBMITTER:</b>	Timothy J. Connors		
<b>Signature:</b>	/timothy j connors/		

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Date:

07/14/2008

**Total Attachments: 30**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "*Agreement*") is made and entered into this 29th day of October 2004 (the "*Agreement Date*"), by and between Mayfare Software Solutions, L.L.C., a Delaware limited liability company ("*Seller*") and Peak Performance Solutions, Inc., a Delaware corporation ("*Purchaser*").

### RECITAL

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WHEREAS, Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and acquire from Seller, all Seller's assets including software, technologies, intellectual property rights, customer contracts, cash, accounts payable, and certain other assets related to the Mayfare Business (as defined below) on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the facts recited above and the mutual agreements set forth herein, the parties hereby agree as follows:

### ARTICLE I.

#### DEFINITIONS

SECTION 1.01. Certain Defined Terms. Except as specified otherwise, when used in this Agreement and any Exhibits or Schedules hereto, the following terms shall have the meanings specified:

"*Accounts Receivable*" means as of the Closing Date (i) all trade accounts receivable and other rights to payment from customers of Seller for work performed or to be performed for such customers by the Seller and the full benefit of all security for such accounts or rights to payment, and (ii) any claim, remedy or other right related to any of the foregoing.

"*Affiliate*" means, with respect to any specified person, any other person that directly or indirectly controls, is controlled by, or is under common control with, such specified person.

"*Agreement*" and "*Agreement Date*" have the respective means specified for such terms in the Preamble to this Agreement.

"*Ancillary Agreements*" has the meaning specified in Section 3.01.

"*Assigned Agreements*" has the meaning specified in Section 2.02.

"*Assignment Notices*" has the meaning specified in Section 3.03.

"*Assumed Liabilities*" has the meaning specified in Section 2.04.

"*Closing*" and "*Closing Date*" will have the respective meanings specified for such terms in Section 2.08.

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"Code" means the Internal Revenue Code of 1986, as amended, and the rulings and regulations promulgated thereunder.

"Collected Revenue" means the aggregate amount received by Seller from customers following the Closing in respect of Accounts Receivable from the Mayfare Business.

"Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of stock, as an officer, director, trustee or executor, by contract or otherwise.

"Customer Support Software" means all of Seller's customer support software that is owned or used by Seller in the Mayfare Business as of the Closing Date, including without limitation subsequent versions thereof, source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, links, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith.

"Disclosed Taxes" means any and all Taxes disclosed or made known to Purchaser by Seller in the financial statements.

"Encumbrance" means any pledge, lien, collateral assignment, security interest, mortgage, title retention, conditional sale or other security arrangement, or any charge, adverse claim of title, ownership or right to use, or any other encumbrance of any kind whatsoever.

"Excluded Assets" has the meaning specified in Section 2.03.

"Excluded Liabilities" has the meaning specified in Section 2.04.

"GAAP" means generally accepted accounting principles in the United States, consistently applied.

"Indemnified Party" has the meaning specified in Section 7.04.

"Indemnifying Party" has the meaning specified in Section 7.04.

"Indemnification Period" has the meaning specified in Section 7.05.

"Intellectual Property Rights" means, collectively, all of the following intangible worldwide legal rights, whether or not filed, perfected, registered or recorded: (i) patents, patent applications, and patent rights, including any and all continuations, continuations-in-part, divisions, reissues, reexaminations or extensions thereof, whether now existing or hereafter filed, issued or acquired; (ii) rights associated with works of authorship (including audiovisual works), including copyrights, copyright applications, and copyright registrations, moral rights, mask work rights, mask work applications and mask work registrations; (iii) rights relating to the protection of trade secrets and confidential information; (iv) design rights, web site, URLs and industrial property rights; (v) any rights analogous to those set forth in the preceding clauses and

any other proprietary rights relating to intangible property including trademarks, service marks, trademark and service mark registrations and applications therefor, trade names, rights in trade dress and packaging and all goodwill associated with the same; (vi) rights in customer and prospect lists, trade secrets, know-how, designs, plans and specifications; and (vii) all rights to sue for any past, present or future infringement of any of the foregoing rights and the right to all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing rights, including without limitation damages for past, present or future infringement thereof. The term "Intellectual Property Rights" does not refer to tangibles or tangible embodiments of Intellectual Property Rights.

"*Liabilities*" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, including, without limitation, those arising under any law, action or governmental order and those arising under any contract, agreement, arrangement, commitment or undertaking.

"*Mayfare Business*" means Seller's business of developing, marketing, licensing, contracting, distributing or otherwise commercially exploiting, all or any aspect of the Software, the software documentation, company data, consulting services, customer contracts, Intellectual Property Rights and/or any aspect or part thereof and performing Seller's obligations under the Assigned Agreements (as defined below).

"*Mayfare Documentation*" means, collectively, all programmers' notes or logs, source code annotations, user guides, manuals, instructions, software architecture designs, layouts, any know-how, and any other designs, plans, drawings, documentation or materials that are related in any manner to any Mayfare Software or any Mayfare Intellectual Property Rights, whether in tangible or intangible form.

"*Mayfare Intellectual Property Rights*" means, collectively, all worldwide Intellectual Property Rights in, to or related or associated in any manner with: (i) the Mayfare Software or any aspect or part thereof; or (ii) the Mayfare Documentation or any aspect or part thereof. Seller does not retain any marks, URLs, web sites or other property used in the Mayfare Business.

"*Mayfare Software*" means, collectively, all past and current versions for all operating systems and platforms of all of the software (including all software programs, objects, modules, routines, algorithm, derivative works, and code, in both source code and object code form) owned by Mayfare (i) that is more fully described in Exhibit 1.01 attached hereto, and includes, without limitation, the software products marketed by Seller under the names "J. P. Sedlak, Inc", "Insurance Solution" and "IS4W;" (ii) any other software owned by Seller that is used by Seller in connection with the Mayfare Business (including without limitation the Customer Support Software and any other third party software) or the development or utilization of the software described in clause (i) of this paragraph; (iii) all derivative works of any of the software described in clauses (i) and (ii) of this paragraph; and (iv) and all files, data, materials, manuals, design notes and other items and documentation related thereto.

"*Mayfare Technology Deliverables*" has the meaning specified in Section 2.02.

"*Person*" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity.

"*Pledge Agreement*" has the meaning specified in Section 2.05.

"*Prepaid Revenue*" means the aggregate amount received by Seller from customers prior to the Closing in connection with Seller's maintenance and service obligations relating to the Mayfare Business.

"*Prepaid Revenue Report*" has the meaning specified in Section 3.05.

"*Property Taxes*" has the meaning specified in Section 6.02.

"*Purchased Assets*" has the meaning specified in Section 2.02.

"*Purchase Price*" has the meaning specified in Section 2.05.

"*Security Agreement*" has the meaning specified in Section 2.05.

"*Seller Collections*" means, for the period beginning with the Closing Date all accounts receivable, the sum of the following (without duplication): (i) aggregate amount of the Accounts Receivable collected or received by Seller (i.e., the aggregate of the Prepaid Revenue and Collected Revenue, plus (ii) all amounts remitted to Seller by Purchaser pursuant to Section 5.06 hereof, plus (iii) any other amounts received by Seller with respect to the Purchased Assets.

"*Seller's Confidential Information*" has the meaning specified in Section 5.02.

"*Straddle Period*" has the meaning specified in Section 6.03

"*Tax*" or "*Taxes*" means all foreign, federal, state and local taxes of any kind whatsoever (whether payable directly or by withholding), including but not limited to sales, use, excise, franchise, ad valorem, property, inventory, value added and payroll taxes, customs and other duties, assessments and levies, together with any interest and penalties, additions to tax or additional amounts with respect thereto, imposed by any taxing authority.

"*Third Party Claim*" has the meaning specified in Section 7.04.

"*Trust Period*" has the meaning specified in Section 5.04.

"*Transaction Taxes*" has the meaning specified in Section 6.01.

## ARTICLE 2.

### PURCHASE AND SALE OF PURCHASED ASSETS

SECTION 2.01. Agreement to Sell and Purchase. Subject to the terms of this Agreement, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser, and

Purchaser hereby purchases and acquires, all rights, title and interest in and to all the Purchased Assets (as defined below) free and clear of all Encumbrances whatsoever.

SECTION 2.02. Purchased Assets Defined. As used in this Agreement, the term "*Purchased Assets*" shall mean, collectively, each and all of the following assets and properties owned by Seller as of the Agreement Date:

- (a) all of the Mayfare Software;
- (b) all of the Mayfare Documentation;
- (c) all of the Mayfare Intellectual Property Rights and the going concern value and goodwill related thereto;
- (d) all telephone, telecopy and e-mail addresses and listings used by Seller in connection with the Mayfare Business;
- (e) all Accounts Receivables;
- (f) \$336,000 in cash;
- (g) all work in progress;
- (h) all other assets (other than Excluded Assets as defined in Section 2.03) shown on the balance sheet attached as Exhibit 2.02(h);
- (i) any and all copies in Seller's control, except copies in the possession of customers who have licensed the source code from Seller, in a tangible medium and other tangible embodiments of (i) the Mayfare Software (whether in source code or object code form); (ii) the Mayfare Documentation; and (iii) the Mayfare Intellectual Property Rights (all such copies and tangible embodiments hereinafter collectively called the "*Mayfare Technology Deliverables*");
- (j) all documentation, marketing materials, web sites, registered URL's, promotional literature, and other sales or marketing-related materials owned by Seller and used in connection with the Mayfare Business (whether in hard-copy or magnetic form);
- (k) all of Seller's right, title and interest, if any, in those written agreements and contracts listed on Exhibit 2.02(k) attached hereto (collectively, the "*Assigned Agreements*");
- (l) all of Seller's general and financial records, financial information, marketing and sales information, pricing, marketing plans, business plans, financial and business projections, customer lists, correspondence, customer files, bug reports, and other files and records (or applicable

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portions thereof) pertaining to the Purchased Assets, the Mayfare Business, including all copies thereof personnel files of Mayfare Employees (whether in hard-copy or magnetic form) (the "***Business Records***"), it being understood that Seller may retain copies of such financial records and financial information;

- (m) all licenses, franchises, permits, agreements, waivers and authorizations issued by governmental authorities (collectively "***Governmental Permits***") held by Seller in connection with the Mayfare Business that are necessary for the operation of the Mayfare Business;
- (n) all the equipment and devices (including data processing hardware and related telecommunications equipment, media, and tools) owned by Seller in connection with the Mayfare Business; and
- (o) all of Seller's right and interest in and to any and all other tangible and intangible assets generally used by Seller in connection with the Mayfare Business, but excluding the Excluded Assets (as defined below).

SECTION 2.03. Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.02 or elsewhere in this Agreement, the assets of Seller set forth on Exhibit 2.03 (collectively, the "***Excluded Assets***") are not part of the sale and purchase contemplated hereunder, are excluded from the Purchased Assets.

SECTION 2.04. Assumption and Exclusion of Liabilities.

- (a) Assumed Liabilities. Subject to the terms of this Agreement, Purchaser shall, following the Closing, assume and pay, perform and discharge when due, (i) all obligations and liabilities of Seller under any Assigned Agreements; (ii) all obligations and liabilities of Seller under any warranties given by Seller to customers who have purchased or licensed Mayfare Software; (iii) all Taxes imposed on or that relate to the ownership, use, operation and control of the Purchased Assets (other than to the extent such Taxes are Excluded Liabilities); (iv) constituting Purchaser's allocable portion of Property Taxes as provided in Section 6.02; (v) all Transaction Taxes; (vi) all liabilities and obligations of Seller with respect to [current] employees of Seller, including liabilities and obligations under any benefit plans; and (vii) all liabilities and obligations of Seller incurred by Seller in the normal course of business; provided, however, that Assumed Liabilities shall not include any Excluded Liabilities.
- (b) Excluded Liabilities. As a material consideration and inducement to Purchaser to enter into this Agreement, Seller shall retain, and shall be solely responsible for paying, performing and discharging when due, and Purchaser shall not assume or otherwise have any responsibility or liability

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for, (i) the liabilities of Seller not incurred in the ordinary course of business; (ii) the liabilities of Seller with respect to former employees (iii) all Taxes (other than Transaction Taxes, Property Taxes and Disclosed Taxes) relating to the Purchased Assets for tax periods (or portions thereof) ending on or prior to the Closing Date (collectively, the "*Excluded Liabilities*"). The Excluded Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller.

SECTION 2.05. Purchase Price: Allocation of Purchase Price. In consideration for the purchase and sale of the Purchased Assets, the Purchaser shall pay to the Seller the Purchase Price (as defined below) in such amount and on such dates as set forth in this Section 2.05.

- (a) Purchase Price. The purchase price for the Purchased Assets (the "*Purchase Price*") shall equal one million eight hundred and thirty-six thousand dollars (\$1,836,000), which payment shall be evidenced by a promissory note, dated as of the Closing Date, bearing interest at the rate of 6% per annum (the "*Promissory Note*") attached hereto as Schedule 3.
- (b) Payment of Promissory Note. On June 30, 2005, or such earlier date as Purchaser may determine, Purchaser shall pay to Seller all amounts due under the Promissory Note, including the Purchase Price, plus accrued interest. Purchaser may prepay the Promissory Note at any time from Closing Date to June 30, 2005 without any penalty for prepayment. Until such time as the Promissory Note is paid in full the Board of Directors of Peak Performance, Purchaser shall, and Purchaser shall cause Purchaser's senior management team and shareholders to, not divert, sell, assign or encumber the Purchased Assets. Purchaser shall use best efforts in managing the Purchased Assets and all other assets of Purchaser to insure that the security for the Promissory Note is maintained.
- (c) Purchase Price Allocation. Purchaser shall prepare the allocation of the Purchase Price among the Purchased Assets by December 31, 2004, which Purchaser shall deliver to Seller under separate cover. Seller shall accept such allocation provided that the allocation is prepared in a manner that complies with the requirements of Section 1060 of the Code and the Treasury regulations promulgated thereunder. For all Tax purposes Purchaser and Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the allocation under this Section 2.05(c), and will not take any position inconsistent therewith in any Tax return, in any refund claim, in any litigation or otherwise, unless required to do so by a governmental authority.
- (d) Security. As security for the obligations of Purchaser under the Promissory Note, Purchaser shall execute and deliver to Seller, at the Closing, the Pledge Agreement and Security Agreement in the form

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attached as Exhibits 2.05(d)(i) and 2.05(d)(ii) respectively (the "*Pledge Agreement*" and the "*Security Agreement*" respectively).

- (e) Exclusive Remedy. Notwithstanding anything in this Agreement to the contrary, if (i) Purchaser fails to perform or discharge any Assumed Liabilities when the same become due, or (ii) any of Purchaser's representations and warranties set forth in Article 4 are not true and correct in all material respects as of the time made, then Seller's sole and exclusive remedy for such failures will be the recovery of money damages as set forth in Article 7 hereof. Seller will not have the right to rescind or otherwise terminate or alter this Agreement, or to reacquire any Purchased Assets.

SECTION 2.06. Closing Deliveries.

- (a) Deliveries by the Seller. In connection with the Closing, Seller shall deliver to Purchaser all of the following:
- (i) an executed Assumption Agreement (the "*Assumption Agreement*"), with respect to the assignment and assumption of Assigned Agreements, substantially in the form of Exhibit 2.06(a)(i) attached hereto;
  - (ii) an executed bill of sale (the "*Bill of Sale*"), substantially in the form of Exhibit 2.06(a)(ii) attached hereto;
  - (iii) an executed original of each of the other Ancillary Agreements (as defined in Section 3.01 below);
  - (iv) an executed Assignment of Intellectual Property (the "*IP Assignment*"), with respect to the assignment of the Intellectual Property, substantially in the form of Exhibit 2.06(a)(iv) attached hereto; and
  - (v) possession of all originals and/or copies of the business records of Seller.

SECTION 2.07. Deliveries by Purchaser. At or prior to the Closing, Purchaser shall deliver to the Seller all of the following:

- (a) a fully executed counterpart to any of the Ancillary Agreements (as defined in Section 3.01 below) in which Purchaser is party thereto;
- (b) a fully executed counterpart to the Assumption Agreement;
- (c) the Promissory Note;

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- (d) the Pledge Agreement and
- (e) the Security Agreement.

SECTION 2.08. Closing. Subject to the terms of this Agreement, the consummation of the sale and purchase of the Purchased Assets contemplated herein (the "*Closing*") will occur simultaneously with the execution of this Agreement, and shall be deemed to be effective as of 11:59 p.m. New York time on the Agreement Date (the "*Closing Date*"), and shall take place at the offices of the Purchaser.

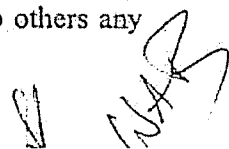
### ARTICLE 3.

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Except as may be expressly set forth in the attached disclosure schedule (the "*Seller's Disclosure Schedule*" attached as Schedule 1, which Seller's Disclosure Schedule is deemed to be a part of Seller's representations and warranties, Seller hereby represents and warrants to Purchaser as follows:

SECTION 3.01. Incorporation and Authority. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to enter into this Agreement and to enter into the Bill of Sale, the Assumption Agreement, the IP Assignment and all other assignments and documents that Seller is to execute and deliver pursuant to this Agreement (collectively, the "*Ancillary Agreements*"), to carry out and perform its obligations hereunder and thereunder and to consummate all of the transactions contemplated hereby and thereby. The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements, and the sale of the Purchased Assets to Purchaser and consummation of all the transactions contemplated hereby and thereby on the terms and conditions set forth herein, have been duly and validly authorized by Seller by all necessary corporate action of Seller's Board of Directors and stockholders and no other corporate action is required to authorize such execution, delivery, performance, sale and consummation. This Agreement has been duly and validly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Purchaser) this Agreement constitutes and, upon the execution of each of the Ancillary Agreements by the parties thereto, the Ancillary Agreements will constitute, legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

SECTION 3.02. No Conflict. The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller, do not and will not: (i) conflict with or violate the Certificate of Incorporation or Bylaws of Seller; (ii) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to the Purchased Assets; (iii) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any



rights of termination, rescission, amendment, acceleration or cancellation of, any of the Assigned Agreements, or any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument relating to any of the Purchased Assets to which Seller is a party or is bound or by which any of the Purchased Assets are bound or affected; or (iv) result in the creation of any Encumbrance on any of the Purchased Assets.

SECTION 3.03. Consents and Approvals. The execution and delivery of this Agreement and the Ancillary Agreements by Seller do not, and the performance of this Agreement and the Ancillary Agreements by Seller (including Seller's assignment of any Assigned Agreements to Purchaser) will not, require any consent, approval, authorization or other action by, or filing with or notification to, any third party, including but not limited to any court (including bankruptcy court), bankruptcy trustee, creditor's committee, receiver, or any governmental or regulatory authority. Exhibit 2.02(k) contains, without limitation, a complete list of each Assigned Agreement with respect to which the consent or approval of a third party is required in order for Seller to assign or transfer such Assigned Agreement to Purchaser pursuant to this Agreement, explicitly indicating each such Assigned Agreement for which such a consent or approval is required. Without limitation, the Seller's Disclosure Schedule contains a list of all Assigned Agreements with respect to which Seller is required to give the other party thereto advance written notice of the assignment or transfer of such Assigned Agreement to Purchaser pursuant to this Agreement ("*Assignment Notices*"). Seller shall have given, no later than the earlier of at least two (2) business days prior to the Agreement Date or the date required pursuant to such Assigned Agreement, Assignment Notices to each party required to be sent an Assignment Notice with respect to an Assigned Agreement.

SECTION 3.04. Title to and Condition of Purchased Assets. Seller owns all of the Purchased Assets and Seller has good and marketable title in and to all the Purchased Assets, free and clear of all Encumbrances whatsoever, other than Encumbrances for Taxes for the current Tax year which are not yet due and payable. None of the Purchased Assets is licensed from any third party and none of the Purchased Assets is licensed to any third party. All of the tangible personal property included in the Purchased Assets is in good working condition and repair, ordinary wear and tear excepted. Title to all the Purchased Assets is freely transferable from Seller to Purchaser free and clear of all Encumbrances without obtaining the consent or approval of any person or party, except as otherwise set forth herein.

SECTION 3.05. Prepaid Revenue. The Seller's Disclosure Schedule sets forth, if applicable, a written report prepared by Seller that sets forth in reasonable detail (including relevant customer information) the amount of the Prepaid Revenue (the "*Prepaid Revenue Report*") collected by Seller for the thirty (30) day period prior to the Closing Date. The information contained in the Prepaid Revenue Report is true, accurate, and complete.

SECTION 3.06. Accounts Receivable. Exhibit 3.06 to this Agreement sets forth a written report prepared by Seller that sets forth in reasonable detail the amount of the Accounts Receivable as of the Closing Date, which represent valid obligations arising from sales actually made or services actually performed by Seller in its ordinary course of business. In the opinion of management each of such Accounts Receivable either has been or will be collected in full,

without any setoff. There is no contest, claim, defense or right of setoff with any account debtor of an Account Receivable relating to the amount or validity of such Account Receivable.

SECTION 3.07. Assigned Agreements.

- (a) Exhibit 2.02(k) to this Agreement contains an accurate and complete list, and Seller has delivered to Purchaser accurate and complete copies, of each Assigned Agreement and each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.
- (b) Each Assigned Agreement is in full force and effect and is valid and enforceable in accordance with its terms.
- (c) As set forth in the Seller's Disclosure Schedule, each Assigned Agreement is assignable by Seller to Purchaser without the consent of any other person.
- (d) Seller is, and at all times has been, in compliance, in all material respects, with the applicable terms and requirements of each Assigned Agreement, which is being assumed by Purchaser.
- (e) As set forth in the Seller's Disclosure Schedule, each other person that has or had any obligation or liability under any Assigned Agreement is, and at all times has been, in all material respects, in compliance with all applicable terms and requirements of such Assigned Agreement.
- (f) No event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a breach of, or give Seller or any other person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Assigned Agreement.
- (g) Seller has not given to or received from any other person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or breach of, or default under, any Assigned Agreement.
- (h) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Seller under current or completed Assigned Agreements with any person having the contractual or statutory right to demand or require such renegotiation and no such person has made written demand for such renegotiation.
- (i) As set forth in the Seller's Disclosure Schedule, each Assigned Agreement, permit, franchise or other instrument assigned to or assumed by Purchaser pursuant to this Agreement or any of the Ancillary

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Agreements is in full force and effect, and neither Seller nor, to Seller's knowledge, any other party to any Assigned Agreement is in breach or default thereof.

- (j) The Assigned Agreements represent all written agreements under which the Seller conducted the Mayfare Business immediately prior to the Closing Date. Seller is not, and has not been a party to any material contract or arrangement relating to the Mayfare Business or the Purchased Assets that has not been set forth in a written contract which is included within the list of Assigned Agreements.

SECTION 3.08. Litigation. There is no claim, action, suit, investigation or proceeding of any nature pending or, to the best of Seller's knowledge, threatened, at law or in equity, by way of arbitration or before any court, governmental department, commission, board or agency that: (i) may adversely affect, contest or challenge Seller's authority, right or ability to sell or convey any of the Purchased Assets to Purchaser hereunder or otherwise perform Seller's obligations under this Agreement or any of the Ancillary Agreements; (ii) challenges or contests Seller's right, title or ownership of any of the Purchased Assets; (iii) asserts that any Purchased Asset, or any action taken by an employee or contractor of Seller with respect to any Purchased Asset, infringes any Intellectual Property Rights of any third party or constitutes a misappropriation or misuse of any Intellectual Property Rights, trade secrets or proprietary rights of any party; (iv) seeks to enjoin, prevent or hinder the consummation of any of the transactions contemplated by this Agreement or the Ancillary Agreements; or (v) would impair or have an adverse effect on Purchaser's right or ability to use or exploit any of the Purchased Assets or impair or have an adverse effect on the value of any Purchased Asset. There are no judgments, decrees, injunctions or orders of any court, governmental department, commission, agency, instrumentality or arbitrator pending or binding against Seller, which affect the Purchased Assets, or the Mayfare Business.

SECTION 3.09. Compliance with Laws. Seller has complied in all material respects with and has not received any notices of any material violation with respect to, any federal, state or local statute, law or regulation (including but not limited to environmental laws), domestic or foreign, applicable to the Mayfare Business, Seller's conduct of the Mayfare Business or any of the Purchased Assets.

SECTION 3.10. Intellectual Property.

- (a) The Purchased Assets include all Intellectual Property Rights necessary to enable Purchaser to conduct the business of the Mayfare Business in the manner in which such business was conducted immediately prior to the Closing Date, other than generally available Intellectual Property Rights such as those found in office programs, and as such is proposed to be conducted by Purchaser, without the need for any license from any person.
- (b) To the knowledge of Seller, the Purchased Assets do not infringe upon any Intellectual Property Rights of any third party and no third party has

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asserted or threatened to assert against Seller any claim of infringement of Intellectual Property Rights.

- (c) Seller owns, possesses, has the exclusive right to make, use, sell, license, has the right to bring actions for the infringement of the Mayfare Business Intellectual Property Rights.
- (d) There are no claims, demands or proceedings instituted, pending or threatened by any person pertaining to or challenging the right of the Seller to use any of the Mayfare Business Intellectual Property Rights.
- (e) Except as disclosed on the Disclosure Schedule or in the ordinary course of business, Seller has not granted any third party any outstanding licenses or other rights to any of the Mayfare Intellectual Property Rights.
- (f) As disclosed on the Disclosure Schedule, none of the Mayfare Intellectual Property Rights is held or used pursuant to a license or similar grant of rights by any third party.
- (g) Seller has not made any contract or arrangement whereby it may become liable to any person for any royalty, fee or other compensation for the ownership, use, license, sale, distribution, manufacture, reproduction or disposition of any Mayfare Intellectual Property Rights, other than indemnification provisions in licenses made in the ordinary course of business.
- (h) Seller has made reasonable efforts, to protect the secrecy and confidentiality of all proprietary information used in connection with the Mayfare, including without limitation the Mayfare Software and the Mayfare Documentation.

SECTION 3.11. Product Warranties; Defects.

- (a) Each product manufactured, sold, distributed, licensed, leased or delivered by Seller in connection with the Mayfare Business has been in substantial conformity with all applicable contractual commitments and all express warranties made by Seller and there is, to the best of Seller's knowledge, no basis for any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any such contractual commitments or express warranties for replacement or repair thereof or other damages in connection therewith. No product manufactured, sold, licensed, leased or delivered by Seller in connection with the Mayfare Business is subject to any guaranty, warranty, or other indemnity beyond Seller's applicable standard terms and conditions of sale, lease or licensing (as set forth in written agreements that Seller has delivered to Purchaser) and, except as expressly set forth in the Assigned Agreements, Seller's marketing

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literature or documentation for the Mayfare Software incorporated into any relevant Assignment Agreement by reference (a copy of which has been provided to Purchaser) Seller has not made any representations to any customers or other third party in connection with the Mayfare Business that the Mayfare Software or any service provided by Sellers is fit for any particular purpose other than as set forth in such Assigned Agreements, marketing literature, and/or documentation for the Mayfare Software.

- (b) Each product manufactured, sold, distributed, licensed, leased or delivered by Seller in connection with the Mayfare Business, including all Mayfare Software Products (A) performs and operates in conformity with its documentation and (B) has not experienced, suffered, caused or produced any material malfunction, data loss or breakdown in operation or caused or produced any damage to any computer system. No customer, licensee or sublicensee of Seller has brought any complaint, claim, demand, charge, suit, action or proceeding asserting that any product manufactured by Mayfare has (i) failed to perform and/or operate in conformity with its documentation in any material respect, or (ii) experienced, suffered, caused or produced any material malfunction, data loss or breakdown in operation or caused or produced any damage to any computer system, and to the best of Seller's knowledge, there is no basis for any such complaint, claim, demand, charge, suit, action or proceeding.

SECTION 3.12. Government Contracts. As set forth in the Seller's Disclosure Schedule, Seller is not, and has not been a party to any contract or arrangement with any foreign or U.S. federal, state or local government agency relating to the Mayfare Business.

SECTION 3.13. Sufficiency of Assets. The Purchased Assets constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Mayfare Business in the manner historically operated by Seller.

SECTION 3.14. Mayfare Customers. Exhibit 3.14 to this Agreement lists each customer that within the twelve-month period prior to the Closing Date purchased or licensed any product or products of the Mayfare Business and, with respect to each such customer:

- (a) the amount billed by Seller for such customer for calendar year 2004; and
- (b) whether such customer will be bound by an Assigned Agreement on the Closing Date.

SECTION 3.15. Source Code. To Seller's knowledge, no source code relating to any aspect or element of any version of any Mayfare Software is in the possession of any person other than Seller and no person or entity other than Seller has any right or license to have access to, or to use, any source code for any Mayfare Software other than those customers who have licensed the source code from Seller.



SECTION 3.16. Employees. The Seller has timely filed all tax and other returns relating to its employment of individuals and has paid all taxes shown to be due thereon, including (without limitation) all taxes with respect to FICA and FUTA except to the extent that failure to file such taxes or other returns could not reasonably be expected to have a material adverse effect on the Purchased Assets.

SECTION 3.17. Purchase Price: Adequate Provision for Creditors. Seller's Board of Directors, after reasonable due diligence, has determined in good faith that the Purchase Price represents the fair market value of the Purchased Assets, and that after the consummation of the transactions contemplated by this Agreement, to its knowledge Seller will be able to meet its obligations to its remaining creditors as they come due. No order has been made, no petition presented, or resolution passed for the winding-up of Seller, nor has any resolution been passed, agreement entered into, or term sheet or letter of intent approved by Seller with respect to a future sale or disposition of material assets of Seller other than pursuant to this Agreement.

SECTION 3.18. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

SECTION 3.19. Full Disclosure. All of the representations and warranties made by Seller under Article 3 of this Agreement, Exhibit 3.19 and in the certificates delivered by Seller to Purchaser at the Closing are true, correct and complete in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such representations, warranties or statements, in light of the circumstances under which they are made, not misleading.

#### ARTICLE 4.

##### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

SECTION 4.01. Incorporation and Authority. Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to enter into this Agreement, the Assumption Agreement and the Pledge and Security Agreement, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement, the Assumption Agreement and the Pledge and Security Agreement has been duly and validly executed and delivered by Purchaser, and (assuming due authorization, execution and delivery by Seller) this Agreement, the Assumption Agreement and the Pledge and Security Agreement constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

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SECTION 4.02. No Conflict. The execution, delivery and performance of this Agreement and the Assumption Agreement by Purchaser does not and will not (a) violate or conflict with the Articles of Incorporation or Bylaws of Purchaser, or (b) conflict with or violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to Purchaser except such conflicts or violations as would not prevent or delay Purchaser from consummating the transactions or from performing any of its obligations contemplated by this Agreement and the Assumption Agreement.

SECTION 4.03. Consents and Approvals. The execution and delivery of this Agreement and the Assumption Agreement by Purchaser does not, and the performance of this Agreement and the Assumption Agreement by Purchaser will not, require any consent, approval, authorization or other action by, or filing with or notification to, any governmental or regulatory authority with respect to Purchaser, except where Purchaser's failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or delay Purchaser from performing any of its obligations under this Agreement and the Assumption Agreement.

SECTION 4.04. No Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Purchaser.

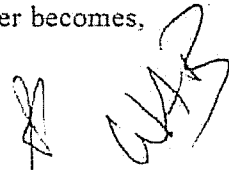
SECTION 4.05. Purchaser's Assets. At Closing Purchaser is the owner of the CES Software under the River Run Asset Purchase Agreement of September 30, 2004, and has contracts in force for the Care 125 program with Precis, Inc and Foresight. The Purchaser was incorporated June 2004 and has no liabilities at the time of Closing.

## ARTICLE 5.

### POST-CLOSING COVENANTS AND OBLIGATIONS

SECTION 5.01. Books and Records. If, in order to properly prepare documents required to be filed with governmental authorities (including taxing authorities) or its financial statements, it is necessary that either party hereto or any successors be furnished with additional information relating to the Purchased Assets, the Assumed Liabilities or the Mayfare Business, and such information is in the possession of the other party hereto, such party agrees to use its reasonable efforts to furnish such information to such other party, at the cost and expense of the party being furnished such information.

SECTION 5.02. Confidential Information. All confidential and/or proprietary information of Seller related to the Mayfare Business or any of the Purchased Assets, including but not limited to the Mayfare Software and the Mayfare Documentation (collectively, "*Seller's Confidential Information*") will be held by Seller in strict confidence and, at all times following the Closing, will not be used or disclosed by Seller to any third party; except that the Seller may use internally copies of those Business Records that it is entitled to retain under Section 2.02 hereof solely to prepare and file tax returns and prepare Seller's financial statements. It is agreed that Seller's Confidential Information will not include information that is now, or later becomes,



part of the general public knowledge or literature in the art, other than as a result of a breach of this Agreement by Seller. The fact that Seller knew of and had access to any or all of the Seller's Confidential Information or any part thereof at any time on or before the Closing shall not affect or diminish Seller's obligations under this Section 5.02.

SECTION 5.03. Further Actions. From and after the Closing, each of the parties hereto will execute and deliver such documents and other papers and take such further actions as may be reasonably required to carry out the provisions of this Agreement or any other agreements required to be entered into by such party pursuant to this Agreement and give effect to the transactions contemplated by this Agreement and such other agreements.

SECTION 5.04. Assets Held In Trust Post-Closing. Notwithstanding any other provision of this Agreement, to the extent that any of the Purchased Assets are not assignable or otherwise transferable to Purchaser without the consent, approval or waiver of any third party (including any governmental agency), or if such assignment or transfer would constitute a breach thereof or a violation of any applicable law, then neither this Agreement shall constitute an assignment or transfer (or an attempted assignment or transfer) of such Purchased Asset, nor an assumption by Purchaser of any related Assumed Liabilities, until such consent, approval or waiver of such party or parties has been duly obtained; in which case the benefits of such Purchased Assets accruing to Seller from the Closing Date to the earlier of (i) the date the applicable consent, approval or waiver is obtained or (ii) one (1) year minus one day from the Closing Date (the "*Trust Period*") shall be held in trust by Seller for Purchaser's behalf. At all times during the Trust Period, Seller shall take any and all actions reasonably requested by Purchaser (all at Purchaser's sole cost and expense to the extent such expenditure has been pre-approved by Purchaser in advance) to provide Purchaser with the benefits of, and Purchaser shall take any and all action reasonably requested by Seller to perform on behalf of Seller and bear all reasonable costs and expenses associated with, and indemnify and hold harmless Seller against those Liabilities (and only those Liabilities) relating to, such Purchased Assets to the extent such Liabilities would have constituted Assumed Liabilities hereunder had the Purchased Asset in question been assigned and transferred to Purchaser at the Closing and such Purchased Assets and related Assumed Liabilities shall be deemed transferred and assigned to, and assumed by, Purchaser without further action by the parties upon the receipt of such consent, approval or waiver and its delivery to Purchaser. With respect to each Purchased Asset whose assignment or transfer to Purchaser requires the consent, approval or waiver of another party thereto or any third party, Seller shall use diligent efforts to obtain such consent, approval or waiver of such other party or parties or such third party to such assignment or transfer as promptly as practicable. Purchaser agrees to cooperate with Seller and supply relevant information to such party or parties or such third party in order to assist Seller in its obligations under this Section. Notwithstanding the foregoing, nothing contained herein shall obligate Seller or Purchaser to expend or pay any amount to third parties to obtain any consents, approvals or waivers. Purchaser shall have no further obligations to perform, bear, or indemnify Seller with respect to any Liabilities related to any Purchased Assets that have not been assigned to Purchaser by the end of the Trust Period.

SECTION 5.05. Collection of Accounts Receivables and Pre-Paid Revenue.

- (a) From and after the Closing, until ninety days from the Closing Date, Seller shall use best efforts to contact and collect from customers of the Mayfare Business all Accounts Receivable and Prepaid Revenue due and owing; provided, however, Seller shall not use the services of any collection agency or law firm, without Purchaser's prior written consent, and Seller shall not use any collection method or tactic that could reasonably be expected to alienate or harass any customers that are or that are expected to become customers of Purchaser following the Closing Date.
- (b) For all periods beginning with the Closing Date, the Seller shall, on or before the twentieth (20<sup>th</sup>) day of the month following closing, remit to Purchaser the aggregate amount of Accounts Receivable, Prepaid Revenue and other amounts collected with respect to the Purchased Assets by Seller (or its designee) for the prior calendar month.

SECTION 5.06. Certain Post-Closing Collections. By the end of the next business day following Closing, Purchaser shall remit to Seller all Accounts Receivable actually received by Purchaser prior to such date.

SECTION 5.07. Customer and Other Business Relationships. After the Closing, Seller will cooperate with Purchaser in its efforts to continue and maintain for the benefit of Purchaser those business relationships of Seller existing prior to the Closing and relating to the business to be operated by Purchaser after the Closing, and Seller will satisfy the Excluded Liabilities in a manner that is not detrimental to any of such relationships. Seller will refer to Purchaser all inquiries relating to such business. Neither Seller nor any of its officers, employees, agents or shareholders shall take any action that would tend to diminish the value of the Purchased Assets after the Closing or that would interfere with the business of Purchaser to be engaged in after the Closing, including disparaging the name or business of Purchaser.

SECTION 5.08. Excluded Liabilities. Seller shall pay, or make adequate provision for the payment, in full all of the Excluded Liabilities and other Liabilities of Seller under this Agreement.

SECTION 5.09. Assistance with Proceedings. Seller will cooperate with Purchaser and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and records in connection with, any legal or governmental proceeding involving or relating this purchase and sale and to any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Seller or its business.

SECTION 5.10. Assumption of Support Obligation. Pursuant to the Assumption Agreement, Purchaser agrees to provide the service and support obligations of the Mayfare Business under the Assigned Agreements to the customers set forth on Exhibit 1.01.

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SECTION 5.11. Employees. Effective as of the Closing Date, Purchaser shall have offer employment to all employees of Seller on terms and conditions substantially the same in the aggregate as the terms and conditions of such employees' employment with Seller. Effective as of the Closing Date, Purchaser shall assume all of the employee benefit plans other than Seller's severance policy maintained by Seller, including but not limited to Seller's medical, dental and 401(k) plans and shall credit all employees of Seller who become employees of Purchaser with credit for service with Seller for purposes of vesting and participation, as well as satisfaction of deductibles under Purchaser's plans.

## ARTICLE 6.

### TAX MATTERS

SECTION 6.01. Transaction Taxes. Purchaser shall be responsible for, and shall pay all excise, value added, registration, stamp, property, documentary, transfer, sales, use and similar Taxes, levies, charges and fees incurred, or that may be payable to any taxing authority, in connection with the transactions (including without limitation the sale, transfer, and delivery of the Purchased Assets) contemplated by this Agreement (collectively, "*Transaction Taxes*"). Seller shall be responsible for preparing and filing any tax return relating to such Transaction Taxes and shall provide a copy of such return to Purchaser. Purchaser and Seller agree to cooperate in minimizing the amount of any such Transaction Taxes and in the filing of all necessary documentation and all Tax returns, reports and forms with respect to all such Transaction Taxes, including any available pre-Closing filing procedures.

SECTION 6.02. Allocation of Property Taxes. All property taxes, personal property taxes and similar ad valorem obligations in respect of the Purchased Assets (other than any such taxes that are Transaction Taxes and Disclosed Taxes) (the "*Property Taxes*") that relate to periods beginning prior to the Closing Date and ending after the Closing Date ("*Straddle Periods*") shall be prorated in the following manner: (i) the Seller shall be allocated all Property Taxes that are imposed with respect to the Purchased Assets for all tax periods (or portions thereof) that end as of the day prior to the Closing Date, and (ii) the Purchaser shall be allocated all other Property Taxes imposed with respect to the Purchased Assets. Seller shall prepare and file, or shall cause to be prepared and filed, on a timely basis, all Straddle Period tax returns that are required to be filed on or prior to the Closing Date and the Purchaser shall file all such tax returns that must be filed after the Closing Date. The party filing any such tax returns shall provide the other party a copy of such tax return for review not less than ten (10) business days in advance of the due date thereof. To the extent any such tax return reflects an amount of Property Tax liability that is allocable to the party not filing the tax return as provided in this Section 6.02, the party not filing such tax return shall pay to the party filing such tax return its allocable portion of the Property Taxes shown on such tax return not less than five (5) business days before the due date of such payment.

SECTION 6.03. Treatment of Indemnity Payments. All payments (a) made by Seller or Purchaser pursuant to this Agreement, as the case may be, to or for the benefit of the other party pursuant to any indemnification obligations under this Agreement, will be treated as adjustments

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to the Purchase Price for Tax purposes and such agreed treatment will govern for purposes of this Agreement, unless otherwise required by law.

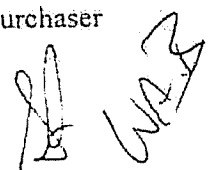
## ARTICLE 7.

### INDEMNIFICATION

SECTION 7.01. Loss Defined; Indemnitees. For purposes of this Article 7, the term "*Loss*" will mean and include any and all liability, loss, damage, claim, expense, cost, fine, fee, penalty, obligation or injury including, without limitation, those resulting from any and all claims, actions, suits, demands, assessments, investigations, judgments, awards, arbitrations or other proceedings, together with reasonable costs and expenses including the reasonable attorneys' fees and other legal costs and expenses relating thereto. As used in this Article 7, the term "*Purchaser Indemnitees*" means and includes Purchaser and any present or future officer, director, employee, affiliate, subsidiary, stockholder or agent of Purchaser; and the term "*Seller Indemnitee*" means and includes any present or future officer, director, employee, affiliate, subsidiary, owner or agent of Seller.

SECTION 7.02. Indemnification by Seller. Seller agrees, subject to the other terms, conditions and limitations of this Agreement (including the provisions of Sections 7.05 and 7.06 hereof), to indemnify Purchaser and any Purchaser Indemnitee against, and to hold Purchaser and each Purchaser Indemnitee harmless from, all Loss arising out of:

- (a) any breach or violation of any representation, warranty, covenant, agreement or obligation of Seller made herein;
- (b) any of the Excluded Assets or any of the Excluded Liabilities;
- (c) any failure of Seller to pay any of its allocable Property Taxes as provided in Section 6.02;
- (d) liability for noncompliance with any bulk sales, bulk transfer or similar laws applicable to the transactions contemplated by this Agreement (Seller's compliance with which is hereby waived by Purchaser) or any claims asserting that any transactions contemplated by this Agreement constitute a fraudulent conveyance or similar claim;
- (e) any demand, claim, debt, suit, cause of action or proceeding made or asserted by a stockholder, creditor, receiver, or trustee in bankruptcy of Seller, or of the property or assets of either, asserting that the transfer of the Purchased Assets to Purchaser hereunder constitutes a fraudulent conveyance, fraudulent transfer or a preference under any applicable state or federal law, including but not limited to the United States Bankruptcy Code; and
- (f) any failure of any of the Assigned Agreements to be assigned to Purchaser by the end of the Trust Period;



SECTION 7.03. Indemnification by Purchaser. Purchaser agrees, subject to the other terms, conditions and limitations of this Agreement to indemnify Seller and any Seller Indemnitee against, and hold Seller and each Seller Indemnitee harmless from, all Loss suffered or incurred by Seller or any Seller Indemnitee arising out of (i) the breach of any of the representations and warranties of Purchaser contained in Article 4 of this Agreement, and (ii) the Assumed Liabilities or a breach by Purchaser of the Assumption Agreement; provided however, that nothing in this Section 7.03 will impose on Purchaser any duty to indemnify Seller for any Excluded Liabilities.

SECTION 7.04. Procedures for Indemnification. As used herein, an "*Indemnified Party*" means a party seeking indemnification pursuant to Section 7.02 or 7.03 hereof, as applicable, and the term "*Indemnifying Party*" means the party who is obligated to provide indemnification under Section 7.02 or Section 7.03, as applicable. The Indemnified Party agrees to give the Indemnifying Party prompt written notice of any event, or any claim, action, suit, demand, assessment, investigation, arbitration or other proceeding by or in respect of a third party (a "*Third-Party Claim*") of which it has knowledge, for which such Indemnifying Party is entitled to indemnification under this Article 7. In the case of a Third-Party Claim, the Indemnifying Party will have the right to direct, through counsel of its own choosing, the defense or settlement of any such Third-Party Claim at its own expense. In such case the Indemnified Party may participate in such defense, but in such case the expenses of the Indemnified Party will be paid by the Indemnified Party. The Indemnified Party will promptly provide the Indemnifying Party with access to the Indemnified Party's records and personnel relating to any such Third-Party Claim during normal business hours and will otherwise cooperate with the Indemnifying Party in the defense or settlement of such Third-Party Claim, and the Indemnifying Party will reimburse the Indemnified Party for all its reasonable out-of-pocket costs and expenses incurred in providing such access, personnel and cooperation. Upon assumption of the defense of any such Third-Party Claim by the Indemnifying Party, the Indemnified Party will not pay, or permit to be paid, any part of any claim or demand arising from such Third-Party Claim, unless the Indemnifying Party consents in writing to such payment (which consent will not be unreasonably withheld) or unless a final judgment from which no appeal may be taken by or on behalf of the Indemnified Party is entered against the Indemnified Party for such liability. No such Third-Party Claim may be settled by the Indemnifying Party without the written consent of the Indemnified Party, which consent will not be unreasonably withheld. If the Indemnifying Party fails to defend or fails to prosecute or withdraws from such defense, then the Indemnified Party will have the right to undertake the defense or settlement thereof, at the Indemnifying Party's expense. If the Indemnified Party assumes the defense of any such Third-Party Claim pursuant to this Section 7.04 and proposes to settle such Third-Party Claim prior to a final judgment thereon or to forgo appeal with respect thereto, then the Indemnified Party will give the Indemnifying Party prompt written notice thereof and the Indemnifying Party will have the right to participate in the settlement or assume or reassume the defense of such Third-Party Claim.

SECTION 7.05. Limitations on Indemnification.

- (a) Monetary Limitations. Notwithstanding anything herein to the contrary, the maximum cumulative aggregate total liability of a party hereto for its indemnification liabilities under this Article 7 shall not exceed the sum of

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one million eight hundred and thirty-six thousand dollars (\$1,836,000) Payment; no indemnification shall be provided herein until losses exceed \$50,000 in the aggregate. Unless and until the interest and notes have been paid in full the obligation of Seller to indemnify Purchaser shall be satisfied solely by setoff of Purchasers obligations under the note.

- (b) Time Limits. Notwithstanding anything herein to the contrary, no claim for indemnification under this Article 7 may be brought after the twelve (12) month period following the Closing Date (the "*Indemnification Period*"); *provided, however*, that claims for indemnification relating to Taxes (including without limitation Transaction Taxes) may be brought at any time prior to the expiration of the applicable statute of limitation.
- (c) Exclusive Remedy. Notwithstanding anything herein to the contrary, each party's sole and exclusive remedy for a breach of this Agreement arising under law or in equity shall be limited to the indemnification obligations set forth in this Article 7.

## ARTICLE 8.

### GENERAL PROVISIONS

SECTION 8.01. Expenses. All costs, expenses or fees, including, without limitation, fees and disbursements of counsel, financial advisors, accountants, brokers, finders or investment bankers, incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses, whether or not the Closing will have occurred.

SECTION 8.02. Notices. All notices, requests, claims, demands and other communications hereunder will be in writing and will be given or made (and will be deemed to have been duly given or made) (i) when delivered in person or when delivered by telex or facsimile (to the telex or facsimile number of the person to whom notice is given), (ii) when delivered by a courier service (as shown by the records or such courier service), or (iii) on the earlier of actual receipt or the third (3rd) business day following the date of deposit in the United States mail, first class certified or registered mail, postage prepaid, return receipt requested to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

- (a) if to Seller:

Mayfare Software Solutions, L.L.C.  
33-41 Newark Street  
Hoboken, NJ 07030

Attn: Robert M. DeMichele



(b) with a copy to:

LeBoeuf, Lamb, Greene & MacRac, L.L.P.  
125 West 55 Street  
NY, NY 10019

Attn: Joseph L. Seiler III  
Telephone: 212 424 8137

(c) if to Purchaser:

Peak Performance Solutions, Inc.  
2473 Milligan Grove  
Grove City, Ohio 43123

Attn: Steven Isaac, CEO

(d) with a copy to:

Wilmer and Lee  
100 Washington Street, Suite 200  
Huntsville, AL 35801

Attention: Mike Wisner

SECTION 8.03. Public Announcements. Except as may otherwise be required by law, prior to the Closing Date no party to this Agreement will make any public announcements in respect of this Agreement or the transactions contemplated herein or otherwise communicate with any news media without prior notification to the other party, and, to the maximum extent practicable, the parties will cooperate as to the timing and contents of any such announcement.

SECTION 8.04. Headings. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

SECTION 8.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

SECTION 8.06. Entire Agreement. This Agreement, The September 23, 2004 Letter Agreement, Confidential Binding Term Sheet, and the Ancillary Agreements constitute the entire

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agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings with respect to the subject matter hereof, both written and oral.

SECTION 8.07. Assignment. This Agreement will not be assigned by Purchaser or Seller without the prior written consent of the non-assigning party; provided, however, that Purchaser may assign all or a portion of its rights and obligations hereunder to one or more wholly-owned subsidiaries of Purchaser; provided, further, that Purchaser shall guarantee the monetary payment obligations of any such subsidiary hereunder; and provided, further, that any party may assign its rights and obligations hereunder to a person that acquires control of such party by merger, consolidation or a sale of all or substantially all of such party's assets or by acquisition of voting stock of such party representing more than fifty percent (50%) of the total voting power of all outstanding securities of such party, provided such person agrees in writing to be bound by all of its assignor's obligations under this Agreement.

SECTION 8.08. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except for the indemnification rights of Purchaser Indemnitees and Seller Indemnitees under Article 7 hereof.

SECTION 8.09. Amendment; Waiver. This Agreement may not be amended or modified except by an instrument in writing signed by Seller and Purchaser. Waiver of any term or condition of this Agreement will only be effective if in writing and will not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.

SECTION 8.10. Governing Law. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Delaware applicable to contracts executed and performed entirely therein, without regard to the principles of choice of law or conflicts or law of any jurisdiction.

SECTION 8.11. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement.

SECTION 8.12. Submission Of Claims To Arbitration. Any and all controversies or claims arising out of or relating to this Agreement, or the breach thereof shall be settled by to binding arbitration held in Columbus, Ohio administered by an arbitrator mutually select by both Seller and Purchaser and shall be conducted (except to the extent otherwise specifically provided for in this Agreement) under the AAA then-effective commercial arbitration rules; provided, however, that a controversy or claim otherwise subject to arbitration hereunder may initially be heard by any court of competent jurisdiction to the extent, and only to the extent, that initial submission of the matter to a court is necessary for a party to seek emergency, equitable or injunctive relief, and provided, further, however, that the matter initially submitted to a court shall be remanded by the court to arbitration pursuant to this Section 8.12 as soon as the matter

as to which such emergency injunctive relief was sought has been heard by the court. The provisions of this Section 8.12 may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered. Judgment upon any award rendered by the arbitrator may be entered in any court having competent jurisdiction.

SECTION 8.13. Fees and Costs. The prevailing party in any arbitration brought hereunder shall be entitled to recover, as an element of the costs of the arbitration and not as damages, its reasonable attorneys' fees, experts' fees and other costs and expenses incurred in such arbitration to be fixed by the arbitrator (including without limitation, costs, expenses and fees on any appeal and costs, expenses and fees in any initial proceedings before any court).

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER:**

Mayfare Software Solutions, LLC.

By: W.A. Barnett

Name: W. A. Barnett

Title: CEO

**PURCHASER:**

Peak Performance Solutions, Inc.

By: SR Isaac

Name: STEVEN R. ISAAC

Title: CEO

[Signature Page to Asset Purchase Agreement]

**List of Excluded Assets**

1. *Cash in the amount of \$75,000.*

IN WITNESS WHEREOF, Seller has caused this List of Excluded Assets exhibit to be executed on the date first written above.

Mayfare Software Solutions, L.L.C.

By: WA Barnett

Name: WA BARNETT

Title: CEO

SCHEDULE 1

**Seller's Disclosure Schedule**

1. None of the Assigned Agreements require consent of the other party
2. All parties under the Assigned Agreements are in material compliance.
3. All agreements are in full force.
4. No rights have been granted except software in the possession of customers who have licensed the source code from Seller as set forth in section 2.02(i).
5. None of the Mayfare Intellectual Property Rights is held or used pursuant to a license or similar grant of rights by any third party.
6. No government contracts.

IN WITNESS WHEREOF, Seller has caused this listing of Mayfare's Disclosure Schedule to be executed on the date first written above.

Mayfare Software Solutions, L.L.C.

By: WA Barnett

Name: WA Barnett

Title: CEO

BILL OF SALE AND ASSIGNMENT AGREEMENT

This Bill of Sale and Assignment Agreement (this "Agreement") is made as of October 29, 2004 by Mayfare Software Solutions, Inc., a Delaware corporation ("Seller"), in favor of Peak Performance Solutions, Inc., a Delaware corporation ("Purchaser"). Seller and Purchaser are parties to a certain Asset Purchase Agreement dated as of October 29, 2004 (the "Asset Purchase Agreement") between Seller and Purchaser. Capitalized terms used without definitions in this Agreement shall have the same meanings ascribed to such terms in the Asset Purchase Agreement. This Agreement is being made and entered into pursuant to the Asset Purchase Agreement.

1. **Sale and Assignment of Purchased Assets.** Pursuant to the Asset Purchase Agreement, Purchaser has on the date hereof purchased the Purchased Assets from Seller as provided in the Asset Purchase Agreement. In accordance with and subject to the terms and conditions of the Asset Purchase Agreement, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby sell, assign, bargain, transfer, convey and deliver to Purchaser all right, title and interest in and to the Purchased Assets.
2. **Purchase Price.** Seller hereby acknowledges receipt in full of the entire purchase price for the Purchased Assets from Purchaser.
3. **Further Assurances.** Seller agrees to cooperate with Purchaser to execute and deliver such other documents and instruments and to do such further acts and things as from time to time may be reasonably requested by Purchaser to evidence, vest, perfect and confirm, document and carry out the sale of the Purchased Assets contemplated by the Asset Purchase Agreement and this Agreement and Purchaser's ownership of all right, title and interest therein at Purchaser's expense.
4. **Effect of Agreement.** Nothing in this Bill of Sale and Assignment Agreement shall, or shall be deemed to, modify or otherwise affect any provisions of the Asset Purchase Agreement or affect or modify any of the rights or obligations of the parties under the Asset Purchase Agreement. In the event of any conflict between the provisions hereof and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale and Assignment Agreement to be executed on the date first written above.

Mayfare Software Solutions, L.L.C.

By: WA Samett

Name: WA SAMETT

Title: CEO