

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Alpheon Corporation		12/31/2010	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	mindSHIFT Technologies, Inc.		
Street Address:	309 Waverley Oaks Rd.		
Internal Address:	Suite 301		
City:	Waltham		
State/Country:	MASSACHUSETTS		
Postal Code:	02452		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3560649	MANAGING TECHNOLOGY. ENABLING BUSINESS.	
CORRESPONDENCE DATA			
Fax Number:	2122533599		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	212-253-3530		
Email:	steven.robinson@mindshift.com		
Correspondent Name:	Steven H Robinson		
Address Line 1:	158 W. 27th St., 5th floor		
Address Line 2:	c/o mindSHIFT Technologies, Inc.		
Address Line 4:	New York, NEW YORK 10001		
NAME OF SUBMITTER:	Steven H Robinson		
Signature:	/Steven H Robinson/		
Date:	01/17/2014		

OP \$40.00 3560649

Total Attachments: 14

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into effective as of the 31st day of December, 2010 by and among: (i) MINDSHIFT TECHNOLOGIES, INC., a Delaware corporation (the "*Purchaser*"); (ii) ALPHEON CORPORATION, a Delaware corporation (the "*Seller*"); and (iii) the following individuals: Greg Donovan and David Sturdivant (the "*Stockholders*" and collectively with the Purchaser and Seller, the "*Parties*"). Certain capitalized terms used in this Agreement are defined on EXHIBIT A.

RECITALS

A. The Stockholders own 2,000,000 shares of the common stock, par value \$0.001 per share, of Seller (collectively, the "*Shares*"), which constitute all of the outstanding capital stock of Seller.

B. The Stockholders and the Seller wish to provide for the sale of substantially all of the assets of the Seller to the Purchaser on the terms set forth in this Agreement.

AGREEMENT

The Parties to this Agreement, intending to be legally bound, agree as follows:

SECTION 1. SALE OF ASSETS; RELATED TRANSACTIONS.

1.1 **Sale of Assets.** The Stockholders and the Seller shall cause to be sold, assigned, transferred, conveyed and delivered to the Purchaser, at the Closing (as defined below), good and valid title to the Assets (as defined below), free of any Encumbrances, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, "*Assets*" shall mean and include: (a) all of the properties, rights, interests and other tangible and intangible assets of the Seller (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with generally accepted accounting principles), including any assets acquired by the Seller prior to Closing; and (b) any other assets that are owned by any of the Stockholders or any other Related Party and that are needed for the conduct of, or are useful in connection with, the business of the Seller, except for the Excluded Assets. Without limiting the generality of the foregoing, the Assets shall include:

- (1) all accounts receivable, notes receivable and other receivables of the Seller (including all accounts receivable identified in Part 2.8 of the Disclosure Schedule and all accounts receivable of the Seller that have arisen since the Financial Statement Date);
- (2) all cash and cash equivalents of the Seller as of the Closing Date;
- (3) all deposits, advances, pre-paid expenses and credits of the Seller;
- (4) all inventories and work-in-progress of the Seller, and all rights to collect from customers (and to retain) all fees and other amounts payable, or that may become payable, to the Seller with respect to services performed on behalf of the Seller on or prior to the Closing Date;

(5) all equipment, materials, prototypes, tools, supplies, vehicles, furniture, fixtures, improvements and other tangible assets of the Seller (including the tangible assets identified in Part 2.10 of the Disclosure Schedule);

(6) all advertising, marketing and promotional materials possessed by the Seller;

(7) all Intellectual Property and Intellectual Property Rights and related goodwill of the Seller (including the right to use the names "Alpheon" and variations thereof in the Business, and the Intellectual Property and Intellectual Property Rights identified in Part 2.12 of the Disclosure Schedule);

(8) all telephone numbers and facsimile numbers used by the Seller in its business;

(9) all rights of the Seller under the Seller Contracts (including the Seller Contracts identified in Part 2.13 of the Disclosure Schedule);

(10) all Governmental Authorizations held by the Seller (including the Governmental Authorizations identified in Part 2.16 of the Disclosure Schedule);

(11) all claims (including claims for past infringement or misappropriation of Intellectual Property or Intellectual Property Rights) and causes of action of the Seller against other Persons (regardless of whether or not such claims and causes of action have been asserted by the Seller), and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Seller (regardless of whether such rights are currently exercisable);

(12) all books, records, files and data of the Seller; and

(13) any other of the Seller's assets identified by Purchaser deemed reasonably necessary to operate the Seller's business after the Closing and not already included above.

1.2 Excluded Assets. Notwithstanding the provisions of Section 1.1, the Seller shall not sell, and the Purchaser shall not purchase or acquire, any of the following assets of the Seller (collectively, the "*Excluded Assets*"):

(1) the Seller's rights under this Agreement or any of the Transactional Agreements;

(2) insurance policies, and all rights to returned or refunded premiums;

(3) Company Employee Plans;

(4) all refunds of Taxes, or recoveries of Taxes from customers or other parties required by contract or otherwise to indemnify the Seller for Taxes, in each case attributable to payments of Taxes made by the Seller or its Stockholders prior to the Closing Date, whether or not any refund claims have been filed prior to the Closing Date;

The Parties hereto have caused this Asset Purchase Agreement to be executed and delivered as of the effective date first set forth above.

"PURCHASER":

MINDSHIFT TECHNOLOGIES, INC.,
a Delaware corporation

By: _____
Paul Chisholm
Chief Executive Officer

"SELLER":

ALPHEON CORPORATION
a Delaware corporation

By: _____
Greg Donovan
Chief Executive Officer

"STOCKHOLDERS":

GREG DONOVAN

DAVID STURDIVANT

"AGENT":

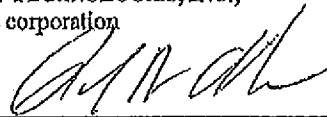
GREG DONOVAN

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a Delaware corporation

By: _____


Paul Chisholm
Chief Executive Officer

"SELLER":

ALPHEON CORPORATION
a Delaware corporation

By: _____

Greg Donovan
Chief Executive Officer

"STOCKHOLDERS":

GREG DONOVAN

DAVID STURDIVANT

"AGENT":

GREG DONOVAN

EXHIBIT A
CERTAIN DEFINITIONS

For purposes of the Agreement (including this Exhibit A):

Acquisition Transaction. "Acquisition Transaction" shall mean any transaction involving:

- (a) the sale or other disposition of all or any portion of the Seller's business or assets (other than in the Ordinary Course of Business);
- (b) the issuance, sale or other disposition of (i) any capital stock of the Seller, (ii) any option, call, warrant or right (whether or not immediately exercisable) to acquire any capital stock of the Seller, or (iii) any security, instrument or obligation that is or may become convertible into or exchangeable for any capital stock of the Seller; or
- (c) any merger, consolidation, business combination, share exchange, reorganization or similar transaction involving the Seller.

Agent. "Agent" shall have the meaning specified in Section 7.1 of the Agreement.

Agreement. "Agreement" shall mean the Asset Purchase Agreement to which this Exhibit A is attached (including the Disclosure Schedule), as it may be amended from time to time.

Breach. There shall be deemed to be a "Breach" of a representation, warranty, covenant, obligation or other provision if there is or has been (a) any material inaccuracy in or breach of, or any material failure to comply with or perform, such representation, warranty, covenant, obligation or other provision, or (b) any claim (by any Person) or other circumstance that is materially inconsistent with such representation, warranty, covenant, obligation or other provision; and the term "Breach" shall be deemed to refer to any such inaccuracy, breach, failure, claim or circumstance.

Business. "Business" shall mean a managed information technology services business that includes a specialization in servicing healthcare providers and related businesses.

Closing. "Closing" shall have the meaning specified in Section 1.7(a) of the Agreement.

Closing Cash. "Closing Cash" shall have the meaning specified in Section 1.3(a)(i) of the Agreement.

Closing Date. "Closing Date" shall have the meaning specified in Section 1.7(a) of the Agreement.

Closing Date Audit. "Closing Date Audit" shall have the meaning specified in Section 1.3(d)(i) of the Agreement.

Closing Date Working Capital. "Closing Date Working Capital" shall have the meaning specified in Section 1.3(d)(i) of the Agreement.

Closing Date Working Capital Schedule. "Closing Date Working Capital Schedule" shall have the meaning specified in Section 1.3(d)(i) of the Agreement.

Closing Stock. "Closing Stock" shall have the meaning specified in Section 1.3(a)(i) of the Agreement.

COBRA. "COBRA" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

Company Databases. "Company Databases" shall have the meaning specified in Section 2.12(o) of the Agreement.

Company Employee. "Company Employee" shall mean any current or former employee, independent contractor or director of the Seller.

Company Employee Agreement. "Company Employee Agreement" shall mean each management, employment, severance, consulting, relocation, repatriation or expatriation agreement or other Contract between the Seller and any Company Employee, other than any such management, employment, severance, consulting, relocation, repatriation or expatriation agreement or other Contract with a Company Employee which is terminable "at will" without any obligation on the part of the Seller to make any payments or provide any benefits in connection with such termination.

Company Employee Plan. "Company Employee Plan" shall mean any plan, program, policy, practice, Contract or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including each "employee benefit plan," within the meaning of Section 3(3) of ERISA (whether or not ERISA is applicable to such plan), that is or has been maintained, contributed to, or required to be contributed to, by the Seller for the benefit of any Company Employee; or with respect to which the Seller has or may have any liability or obligation, except such definition shall not include any Company Employee Agreement.

Company IP. Company IP shall have the meaning specified in Section 2.12(c) of the Agreement.

Company Privacy Policy. "Company Privacy Policy" shall mean each external or internal, past or present privacy policy of the Seller, including any policy relating to (i) the privacy of users of the Seller Products or of any Company Website, (ii) the collection, storage, disclosure, and transfer of any User Data or Personal Data, and (iii) any employee information.

Company WebSite. "Company WebSite" shall mean any public or private website owned, maintained, or operated at any time by or on behalf of the Seller.

Consent. "Consent" shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

Contract. "Contract" shall mean any written, oral, implied or other agreement, contract, understanding, arrangement, instrument, note, guaranty, indemnity, representation, warranty, deed,

assignment, power of attorney, certificate, purchase order, work order, insurance policy, benefit plan, commitment, covenant, assurance or undertaking of any nature.

Damages. "Damages" shall include any loss, damage, injury, decline in value, lost opportunity, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including any legal fee, expert fee, accounting fee or advisory fee), charge, cost (including any cost of investigation) or expense of any nature.

Disclosure Schedule. "Disclosure Schedule" shall mean the schedule (dated as of the date of the Agreement) delivered to the Purchaser on behalf of the Seller and the Stockholders, a copy of which is attached to the Agreement and incorporated in the Agreement by reference.

DOL. "DOL" shall mean the United States Department of Labor.

Earnout Stock. "Earnout Stock" shall have the meaning specified in Section 1.3(a)(iv) of the Agreement.

Encumbrance. "Encumbrance" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, equity, trust, equitable interest, claim, preference, right of possession, lease, tenancy, license, encroachment, covenant, infringement, interference, Order, proxy, option, right of first refusal, preemptive right, community property interest, legend, defect, impediment, exception, reservation, limitation, impairment, imperfection of title, condition or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

Entity. "Entity" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, cooperative, foundation, society, political party, union, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

ERISA. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

Estimated Working Capital. "Estimated Working Capital" shall have the meaning specified in Section 1.3(c) of the Agreement.

Estimated Working Capital Schedule. "Estimated Working Capital Schedule" shall have the meaning specified in Section 1.3(c) of the Agreement.

Excluded Assets. "Excluded Assets" shall have the meaning set forth in Section 1.2 of the Agreement.

Financial Statement Date. "Financial Statement Date" shall mean November 30, 2010.

FMLA. "FMLA" shall mean the Family Medical Leave Act of 1993, as amended.

GAAP. "GAAP" shall mean generally accepted accounting principles, consistently applied.

Governmental Authorization. "Governmental Authorization" shall mean any:

(a) permit, license, certificate, franchise, concession, approval, consent, ratification, permission, clearance, confirmation, endorsement, waiver, certification, designation, rating, registration, qualification or authorization that is, has been or may in the future be issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement; or

(b) right under any Contract with any Governmental Body.

Governmental Body. "Governmental Body" shall mean any:

(a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature;

(b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Entity and any court or other tribunal);

(d) multi-national organization or body; or

(e) individual, Entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as amended.

Holdback Cash. "Holdback Cash" shall have the meaning specified in Section 1.3(a)(iii) of the Agreement.

Holdback Stock. "Holdback Stock" shall have the meaning specified in Section 1.3(a)(iii) of the Agreement.

Indemnitees. "Indemnitees" shall mean the Purchaser Indemnitees or the Seller Indemnitees, as the context requires.

Initial Adjustment. "Initial Adjustment" shall have the meaning specified in Section 1.3(b) of the Agreement.

Intellectual Property. "Intellectual Property" shall mean and include all algorithms, application programming interfaces, apparatus, circuit designs and assemblies, databases and data collections, diagrams, inventions (whether or not patentable), know-how, logos, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, net lists, photomasks, processes, proprietary information, protocols, schematics, specifications, software, software code (in any form including source code and executable or object code), subroutines, test results, test vectors, user interfaces, techniques, URLs, web sites and domain names, works of authorship, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing such as instruction manuals, prototypes, samples, studies, and summaries).

Intellectual Property Rights. "Intellectual Property Rights" shall mean and include all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents and industrial property rights; (e) other proprietary rights in Intellectual Property of every kind and nature; and (f) all registrations, renewals, extensions, continuations, divisions, or reissues of, and applications for, any of the rights referred to in clauses (a) through (e) above.

IRS. "IRS" shall mean the United States Internal Revenue Service.

Knowledge. An individual shall be deemed to have "Knowledge" of a particular fact or other matter if:

- (a) such individual is actually aware of such fact or other matter; or
- (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably diligent and comprehensive inquiry, which inquiry would have been conducted by a prudent individual under the circumstances.

The Seller shall be deemed to have "Knowledge" of a particular fact or other matter if any officer, director, key employee (defined for the purpose of this definition as Amanda Abbott, Chris Cline, Morgan Wood, Amos Brown, Jason Earl, and Ed Comer), attorney or accountant of the Seller has Knowledge of such fact or other matter.

Legal Requirement. "Legal Requirement" shall mean any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, specification, determination, decision, opinion or interpretation that is, has been or may in the future be issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Body.

Liability. "Liability" shall mean any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

Material Adverse Effect. "Material Adverse Effect" means any state of facts, change, event, effect, occurrence or circumstance that, individually or in the aggregate (considered together with all other states of fact, changes, events, effects, occurrences or circumstances) has, has had or could reasonably be expected to have or give rise to a material adverse effect on (a) the business, condition (financial or otherwise), prospects, assets, liabilities, operations or financial performance of the Seller, (b) the ability of the Seller or the Stockholders to consummate the transactions contemplated by this Agreement or to perform any of its or their obligations under this Agreement or any of the Transactional Agreements, or (c) the ability of the Purchaser following the Closing to own and use the Assets.

Minimum Working Capital. "Minimum Working Capital" shall have the meaning specified in Section 1.3(c) of the Agreement.

Open Source Code. "Open Source Code" shall mean any software code that is distributed as "free software" or "open source software" or is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software. Open Source Code includes software code that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, Artistic License, or Sun Community Source License.

Order. "Order" shall mean any:

(a) order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award that is, has been or may in the future be issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Body or any arbitrator or arbitration panel; or

(b) Contract with any Governmental Body that is, has been or may in the future be entered into in connection with any Proceeding.

Ordinary Course of Business. An action taken by or on behalf of the Seller shall not be deemed to have been taken in the "Ordinary Course of Business" unless:

(a) such action is recurring in nature, is consistent with the Seller's past practices and is taken in the ordinary course of the Seller's normal day-to-day operations;

(b) such action is taken in accordance with sound and prudent business practices;

(c) such action is not required to be authorized by Seller's stockholders or Seller's board of directors and does not require any other separate or special authorization of any nature; and

(d) such action, to the Knowledge of the Seller and the Stockholders, is similar in nature and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal day-to-day operations of comparable entities.

Person. "Person" shall mean any individual, Entity or Governmental Body.

Personal Data. "Personal Data" shall mean a natural person's name, street address, telephone number, e-mail address, photograph, social security number, driver's license number, passport number, or customer or account number, or any other piece of information that allows the identification of a natural person.

Proceeding. "Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding and any informal proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard by or before, or that otherwise has involved or may involve, any Governmental Body or any arbitrator or arbitration panel.

Purchase Price. "Purchase Price" shall have the meaning specified in Section 1.3(a) of the Agreement.

Purchaser. "Purchaser" shall mean mindSHIFT Technologies, Inc., a Delaware corporation.

Purchaser Financial Statements. "Purchaser Financial Statements" shall have the meaning specified in Section 4.4(a) of the Agreement.

Purchaser Indemnitees. "Purchaser Indemnitees" shall mean the following Persons: (a) the Purchaser; (b) the Purchaser's current and future Affiliates; (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective permitted successors and assigns of the Persons referred to in clauses "(a)", "(b)" and "(c)" above.

Registered IP. "Registered IP" shall mean all Intellectual Property Rights that are registered, filed, or issued under the authority of any Governmental Body, including all patents, registered copyrights, registered mask works, and registered trademarks and all applications for any of the foregoing.

Related Party. Each of the following shall be deemed to be a "Related Party":

- (a) each of the Stockholders;
- (b) each individual who is, or who has at any time been, an officer of the Seller;
- (c) each member of the immediate family of each of the individuals referred to in clauses "(a)" and "(b)" above; and
- (d) any Entity (other than the Seller) in which any one of the individuals referred to in clauses "(a)", "(b)" and "(c)" above holds (or in which more than one of such individuals collectively hold), beneficially or otherwise, a material voting, proprietary or equity interest.

Release Date. "Release Date" shall have the meaning specified in Section 1.3(a)(iii) of the Agreement.

Released Closing Stock. "Released Closing Stock" shall have the meaning specified in Section 1.3(a)(v) of the Agreement.

Release Stock. "Release Stock" shall have the meaning specified in Section 1.3(a)(v) of the Agreement.

Representatives. "Representatives" shall mean officers, directors, employees, agents, attorneys, accountants, advisors and representatives. The Stockholders and all other Related Parties shall be deemed to be "Representatives" of the Seller.

Restricted Stock. "Restricted Stock" shall have the meaning specified in Section 1.3(a)(iv) of the Agreement, and shall include the Closing Stock, the Holdback Stock and the Earnout Stock.

Retained Cash. "Retained Cash" shall have the meaning specified in Section 1.3(a)(ii) of the Agreement.

Retained Closing Stock. "Retained Closing Stock" shall have the meaning specified in Section 1.3(a)(v) of the Agreement.

Seller. "Seller" shall mean Alpheon Corporation, a Delaware corporation.

Seller Contract. "Seller Contract" shall mean any Contract:

- (a) to which the Seller is a party;
- (b) by which the Seller or any of its assets is or may become bound or under which The Seller has, or may become subject to, any obligation; or
- (c) under which the Seller has or may acquire any right or interest.

Seller Employees. "Seller Employees" shall have the meaning specified in Section 1.7(b)(ix) of the Agreement.

Seller Financial Statements. "Seller Financial Statements" shall have the meaning specified in Section 2.4(a) and Section 2.4(b) of the Agreement.

Seller Indemnitees. "Seller Indemnitees" shall mean the following Persons: (a) the Seller or any of the Stockholders; (b) the Seller's current and future Affiliates and any of the Stockholder's current and future Affiliates; (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)", "(b)" and "(c)" above.

Seller Product. "Seller Product" shall mean any product or service developed, manufactured; marketed, distributed, provided, licensed, or sold at any time by the Seller.

Seller Software. "Seller Software" shall have the meaning specified in Section 2.12(j) of the Agreement.

Setoff Right. "Setoff Right" shall mean the right of Purchaser in its sole discretion to set off in whole or in part against the (a) Restricted Stock or (b) any amounts of cash owed by the Purchaser to the Stockholders (or Agent) under this Agreement (including, without limitation, the Retained Cash, the Holdback Cash, any Working Capital Adjustments, and any amounts due from Purchaser pursuant to the indemnification provisions of this Agreement, but excluding for clarity the Closing Cash) against: (x) any amounts due from the Seller or Stockholders (or Agent) in respect of the indemnification provisions of this Agreement, (y) any Working Capital Adjustment payable (and not paid) by Seller or Stockholders (or Agent) to Purchaser, and (z) any other amounts owed by the Seller or Stockholders (or Agent) to Purchaser under this Agreement. If at any time an indemnification claim is then pending or remains outstanding, the Purchaser will be entitled in its sole discretion to defer the delivery and issuance of any such amounts of cash or shares of Restricted Stock, and/or require the Seller to return for cancellation any shares of Released Closing Stock, which is no more than that amount reasonably expected to be sufficient to offset in full the potential amount of such claim, until such time as such claim is finally resolved in accordance with the applicable provisions of this Agreement. Furthermore, the parties agree that in connection with the exercise of the Setoff Right against the shares of Restricted Stock, then for each dollar of a claim being so offset, 0.6993 shares of Common Stock will be automatically deducted from the shares of Restricted Stock issued or issuable hereunder. Notwithstanding anything in this Agreement to the contrary, Purchaser agrees to utilize the Setoff Right first against the Retained Cash, and then next against the Holdback Cash and through the offset or redemption of shares of Restricted Stock owed to or held by any of the Stockholders under this Agreement, *pro rata* in the same proportions of cash vs. Restricted Stock that comprise the Purchase Price hereunder; *provided*, however, that any post-Closing Working Capital Adjustments owed to Purchaser pursuant to Section 1.3(d) of the Agreement shall be either: (i) first offset by Purchaser against the Retained Cash and Holdback Cash and then next offset against the shares of Restricted Stock, or (ii) paid by Seller or Agent to Purchaser in cash within ten days after the date upon which the Closing Date Working Capital Schedule becomes final and binding pursuant to Section 1.3(d)(ii) of the Agreement.

Shares. "Shares" shall have the meaning specified in the first recital to the Agreement.

Standard Form Agreements. "Standard Form Agreements" shall mean the form(s) of the Seller customer agreements attached in Part 2.13 to the Disclosure Schedule.

Stockholders. "Stockholders" shall have the meaning specified in the introductory paragraph of the Agreement.

Tax. "Tax" shall mean any tax (including any income tax, franchise tax, capital gains tax, estimated tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, occupation tax, inventory tax, occupancy tax, withholding tax or payroll tax), levy, assessment, tariff, impost, imposition, toll, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest); that is, has been or may in the future be (a) imposed, assessed or collected by or under the authority of any Governmental Body, or (b) payable pursuant to any tax-sharing agreement or similar Contract.

Tax Return. "Tax Return" shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information that is, has been or may in the future be filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

Transactional Agreements. "Transactional Agreements" shall mean:

- (a) the Agreement;
- (b) the bill of sale and other documents referenced in Section 1.7(b)(i) of the Agreement;
- (c) the Transfer Restriction Agreements;
- (d) the Key Employee Agreements;
- (e) the Assumption Agreement;
- (f) the Stockholder Non-Competes;
- (g) the Purchaser Confidentiality Agreements, Purchaser offer letters and the Assignment of the Seller Agreements referred to in Section 1.7(b)(ix) of the Agreement; and
- (h) the Lease Assignment and Assumption Agreement.

Transactions. "Transactions" shall mean (a) the execution and delivery of the respective Transactional Agreements, and (b) all of the transactions contemplated by the respective Transactional Agreements, including: (i) the sale of the Assets by the Seller to the Purchaser in accordance with this Agreement; and (ii) the performance by the Seller, the Stockholders and the Purchaser of their respective obligations under the Transactional Agreements, and the exercise by the Seller, the Stockholders and the Purchaser of their respective rights under the Transactional Agreements.

Unaudited Interim Balance Sheet. "Unaudited Interim Balance Sheet" shall have the meaning specified in Section 2.4(b) of the Agreement.

Uncollectible AR's. "Uncollectible AR's" shall have the meaning specified in Section 1.3(d)(iv) of the Agreement.

Unlisted AP's. "Unlisted AP's" shall have the meaning specified in Section 1.3(d)(iv) of the Agreement.

User Data. "User Data" shall mean any Personal Data or other data or information collected by or on behalf of the Seller from users of the Seller Products or of any Company Website.

Working Capital. "Working Capital" shall have the meaning specified in Section 1.3(c) of the Agreement.

Working Capital Adjustments. "Working Capital Adjustments" shall have the meaning specified in Section 1.3(a)(i) of the Agreement.