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Transactional Matter Files

APA - Article IV Section 4.10 Intellectual Property

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(h) The transactions contemplated by this Agreement are not subject to Tax withholding pursuant to the provisions of Section 3406 or Subchapter A of Chapter 3 of the Code, or any other provision of Law.

(i) Seller is a "United States person" within the meaning of Section 7701(a)(30) of the Code.

(j) Seller is not a party to any Tax sharing, allocation, indemnity or other similar Contract, and Seller has no Liability for Taxes relating to the Business of any other Person.

(k) There are no outstanding rulings or requests for rulings with any Tax Authority with respect to the Business, the Acquired Assets or the Assumed Liabilities.

4.9 Assets of the Business.

(a) Seller has good, valid, and exclusive title to the Acquired Assets free and clear of all Liens, except for any Liens as are set forth on **Schedule 4.9(a)**. Immediately following the Closing, all of the Acquired Assets will be owned, leased or available for use by Buyer on terms and conditions identical to those under which, immediately prior to the Closing, Seller owns, leases, uses or holds available for use such assets, properties and rights, which terms and conditions do not include terms and conditions that are triggered by or otherwise arise from the Closing.

4.10 Intellectual Property

(a) **Schedule 4.10(a)(i)** sets forth a true and complete list of all patents and patent applications, registered trademarks and trademark applications, material unregistered trademarks (including all trademarks currently designated by Seller with a "TM" or "SM"), registered copyrights and copyright applications, trade names, logos, Internet domain names, software and Internet and World Wide Web URLs owned by Seller and used in the Business as currently conducted and as it is presently proposed to be conducted by Seller. **Schedule 4.10(a)(ii)** sets forth a true and complete list of all licenses of Intellectual Property granted by third parties with respect to the Business (excluding licenses of generally available, commercial off-the-shelf software only to the extent that all of such excluded licenses together have an aggregate replacement cost of \$5,000 or less (the "**Licensed Commercial Software**")) (the "**Licensed Intellectual Property**"). **Schedule 4.10(a)(iii)** sets forth a true and complete list of the titles of all of the Business' product offerings (the "**Product Offerings**").

(b) The Intellectual Property included in the Acquired Assets (the "**Acquired Intellectual Property**") includes each item of Intellectual Property listed on **Schedule 4.10(a)(i)**, all Intellectual Property of Seller incorporated into or necessary for Commercial Use of the iCare Software and all other Product Offerings other than Licensed Commercial Software, and all other Intellectual Property of Seller used in the Business other than Licensed Commercial Software.

(c) Seller is entitled to use, and Buyer will be entitled to use immediately after the Closing, each item of Licensed Intellectual Property in the operation of the Business. No Legal Proceeding has been made, is pending, has been asserted or, to the Knowledge of Seller, is threatened by any Person that the current or intended use by Seller of the Acquired Intellectual Property or Licensed Intellectual Property, or that the operation of the Business infringes, misappropriates or violates the Intellectual Property of any Person. The operation of the Business as presently conducted does not and to the Knowledge of Seller will not, and the Acquired Assets (including the Commercial Use thereof) do not and to the Knowledge of Seller will not, infringe, misappropriate or otherwise violate any Intellectual Property of any Person. Since January 1, 2009, except as provided in **Schedule 4.10(c)**, neither Seller nor any predecessor in interest has assigned or agreed to assign to any other Person any Intellectual Property related to the Business as presently conducted. There are no pending claims asserted or threatened by Seller alleging any infringement or misappropriation or violation by any Person of any Acquired Intellectual Property or Licensed Intellectual Property and, to the Knowledge of Seller, no Person is engaging in any activity that infringes or misappropriates or violates any Acquired Intellectual Property or Licensed Intellectual Property.

(d) All of the iCare Software has been developed entirely by the Persons identified on **Schedule 4.10(d)(i)** (the "Developers") using commercially available development tools. All of the Developers assigned all of their right, title and interest in and to the iCare Software and any Intellectual Property incorporated therein, in each case free and clear of all Liens, directly or indirectly to Seller pursuant to the applicable written Material Contracts identified on **Schedule 4.11(a)** and duly executed instruments of assignment delivered pursuant to **Section 7.1(d)**. Except as disclosed on **Schedule 4.10(d)(i)**, the iCare Software was developed without using, incorporating or linking to (i) any Open Source Software or (ii) any other Intellectual Property of other Persons (except for Licensed Intellectual Property pursuant to a Material Contract and Licensed Commercial Software). The Acquired Intellectual Property includes, and Seller has possession of, complete copies of all current versions in electronic form, of the iCare Software. Except as set forth on **Schedule 4.10(d)(ii)**, Seller has not disclosed, licensed or otherwise transferred, or agreed to disclose, license or otherwise transfer (including pursuant to an escrow arrangement), any code, documentation for any such code, or significant information about any such code, other than end-user manuals, for the iCare Software to any other Person other than Buyer and its Affiliates. The iCare Software and the Licensed Software does not contain any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," "Easter Eggs," (as these terms are commonly used in the computer software industry), or other malicious software routines or hardware components designed to permit unauthorized access; to disable or erase software, hardware, or data; to render unable to store, maintain or manipulate data accurately; or to perform any other similar type of functions. The iCare Software, the Licensed Software and the Licensed Commercial Software together include all of the software necessary for the Business to make its current Commercial Use of all versions of the iCare Software, including all compilers, tools, utilities and library functions.

(e) Seller has furnished true and complete copies of the Business' written documentation for the iCare Software (collectively, the "**Software Documentation**") to the Buyer. Except as set forth in Schedule 4.10(e)(i), the Software Documentation includes all of the information necessary for a computer programmer of ordinary skill to use, operate, maintain, update, upgrade and otherwise modify all current versions of the iCare Software. Except for the matters discussed in Schedule 4.10(e)(ii), when used with the recommended computer hardware, the Licensed Intellectual Property and the Licensed Commercial Software, the iCare Software correctly performs the material features and functions described in the Software Documentation. There are no bugs or errors known to the developers and/or iCare other than errors or bugs that do not substantially impact the use or operation of, or significantly degrade the performance of, the iCare Software. Schedule 4.10(e)(ii) sets forth the list of known errors and bugs in the iCare Software. None of the errors or bugs set forth on Schedule 4.10(e)(ii) substantially impacts the use or operation of, or significantly degrade the performance of, the iCare Software.

(f) (i) All of the Licensed Software is generally available, commercial off-the-shelf software; (ii) all of the Licensed Software is used by the Business without modification or customization, other than its interaction with the iCare Software, (iii) no Licensed Software is distributed by or on behalf of the Business, including in connection with the distribution of the iCare Software or any other Product Offerings, (iv) none of the Licensed Software incorporates any Open Source Software; (v) the Acquired Assets include, and Seller has possession of, complete copies of all Licensed Software except where title to such copies is retained by the respective licensors; and (vi) there are no bugs or errors known to the developers and/or iCare that have not been previously disclosed in the Licensed Software that significantly affect Seller's ability to make its current or anticipated Commercial Use of the iCare Software.

(g) Seller has taken reasonable steps to maintain and protect all of the Acquired Intellectual Property so as not to adversely affect the validity or enforceability thereof, and to the Knowledge of Seller, no loss or expiration of any of the Acquired Intellectual Property is threatened, pending or reasonably foreseeable (and not as a result of any act or omission by Seller including the failure to pay any required maintenance fees).

(h) Neither Seller nor any of its Affiliates owns any software that is competitive with or a contemplated improvement on the iCare Software or any function or component thereof.

(i) On August 17, 2010, UT entered into a Basic Agreement under which it transferred its rights to the iCare Software to UTRF and on November 23, 2010 UT and UTRF entered into an Amended and Restated Basic Agreement.

(j) On December 1, 2010, UTRF entered into a Side Agreement with iCare which has been approved by Buyer.

(k) On December 1, 2010, UTRF entered into an Assignment of Intellectual Property with iCare which has been approved by Buyer.

(l) On December 1, 2010, UTRF entered into an Intellectual Property License with iCare which has been approved by Buyer.

4.11 Material Contracts.

(a) **Schedule 4.11(a)** sets forth all of the Material Contracts. "**Material Contracts**" means all of the following Contracts used or held for use in or related to the conduct of the Business to which Seller is a party or by which Seller is bound, other than Contracts for Licensed Commercial Software (which are listed on **Schedule 4.10(a)(ii)**):

(i) each Contract for a subscription or license to the Product Offerings, including beta testing agreements and any Contract with UT;

(ii) each Contract involving actual or potential payments to or from Seller in excess of \$5,000 in the aggregate in any 12 month period or during the term thereof;

(iii) each Contract between or among Seller and any Affiliate of Seller;

(iv) each employment or consulting agreement, contract or binding commitment providing for annual compensation payments or for severance, termination or "golden parachute" payments or other similar payments, additional rights or benefits (whether or not optional) upon the occurrence of the transactions contemplated herein or upon the termination of employment;

(v) each note, bond, guarantee, mortgage, indenture, lease, guarantee, license, contract, agreement or other instrument or obligation relating to the borrowing of money by Seller or to the guarantee or assumption by Seller of the obligations of any other Person for borrowed money;

(vi) each distributor, consultant, representative, broker or advertising contract that is not terminable by Seller at will or by giving notice of 30 days or less, without Liability;

(vii) each Contract pursuant to which Seller (A) uses any Intellectual Property of any other Person or incorporates any Intellectual Property of any other Person in any of the Business' products or services (excluding unmodified, generally available, commercial, off-the-shelf software having individual replacement cost of \$1,000 or less), (B) granted or agreed to grant any other Person the right to use any Intellectual Property, (C) developed or had developed any Intellectual Property, or (D) assigned or agreed to assign ownership of any Intellectual Property or had assigned to it or obtained the right to have assigned to it any Intellectual Property;

(viii) each Contract imposing any restriction on the right or ability of Seller, the Business or any employees thereof to (A) compete with, or solicit the services or employment of, any other Person with respect to the Business; (B) sell any product or other asset, or perform any services related to the Business anywhere in the world; (C) acquire any