

University of Tennessee College of Law

Legal Scholarship Repository: A Service of the Joel A. Katz Law Library

Transactional Matter Files

Schedules

Follow this and additional works at: https://ir.law.utk.edu/transactionalmatter_files

Schedule 2.1(a)(ii)

Acquired Contracts

Amended and Restated Basic Agreement by and between UT and UTRF dated as of the date hereof (replacing the Basic Agreement dated August 17, 2010).

Side Agreement by and between UTRF and iCare dated the date hereof.

Assignment of Intellectual Property by and between UTRF and iCare dated the date hereof.

Schedule 2.1(a)(v)

Excluded Intellectual Property

None.

Schedule 2.1(b)(vii)

Excluded Contracts

iCare v.1.0 Software Sublicense Agreement dated as of January 11, 2010, by and between Kent State University, Stark Campus, 6000 Frank Avenue NW, North Canton, Ohio 44720 and iCare Academic, LLC of Knoxville, Tennessee.

Unexecuted iCare v.1.0 Software Sublicense Agreement, by and between Kennesaw State University of Kennesaw, Georgia and iCare Academic, LLC.

Unexecuted iCare v.1.0 Software Sublicense Agreement dated as of September 1, 2010, by and between Shenandoah University, 1775 North Sector Court, Winchester, VA 22601 and iCare Academic, LLC of Knoxville, Tennessee.

Software License, dated January 13, 2010, by and between iCare Academic, LLC and UTRF.

Master Services Agreement dated as of October 13, 2009 by and between iCare, LLC and LBMC Technologies, LLC.

Lease and Facility Use Agreement dated July 9, 2010, by and between iCare Academic, LLC and the University of Tennessee Research Foundation.

Consulting Agreement by and between Harry King and iCare Academic, LLC dated August 24, 2010 and effective January 1, 2010.

Consulting Agreement by and between Rich Berube and iCare Academic, LLC dated August 20, 2010 and effective February 1, 2010.

Letter Agreement by and between iCare Academic, LLC and the Center for Entrepreneurial Growth dated January 5, 2010 and executed August 25, 2010.

Consulting Agreement by and between iCare Academic, LLC and the Center for Entrepreneurial Growth dated August 25, 2010 and effective January 5, 2010.

Engagement Letter with the University of Tennessee Business Clinic dated September 29, 2009.

NSF sponsored grant associated with SBIR Phase I: Usability of iCare: An Academic Electronic Health Record Clinic Simulation Tool effective July 1, 2010.

Schedule 2.1(b)(xi)

Excluded Assets

None.

Schedule 2.2(b)

Excluded Liabilities

14% Promissory Note and Co-Founder Loan Agreement dated November 24, 2009 whereby Matthew A. Bell lent \$10,000 to iCare Academic, LLC.

14% Promissory Note and Co-Founder Loan Agreement dated November 24, 2009 whereby Tami H. Wyatt lent \$10,000 to iCare Academic, LLC.

14% Promissory Note and Co-Founder Loan Agreement dated November 24, 2009 whereby Chayawat Indrandoi lent \$10,000 to iCare Academic, LLC.

Any and all amounts due and owing by iCare Academic, LLC to LBMC pursuant to the Master Services Agreement dated as of October 13, 2009 by and between iCare, LLC and LBMC Technologies, LLC.

Any and all amounts due and owing by iCare Academic, LLC to the Center for Entrepreneurial Growth, including but not limited to, a \$31,000 consulting fee due and owing upon a successful sale transaction.

Any and all amounts due and owing by iCare Academic, LLC to Rich Berube, including but not limited to, a \$38,000 consulting fee due and owing upon a successful sale transaction.

Any and all amounts due and owing by iCare Academic, LLC to Harry King, including but not limited to, a \$115,000 consulting fee due and owing upon a successful sale transaction.

Schedule 2.3(a)

Development and Operating Costs

Salary	\$115,000
Contractors	\$69,750
Payroll taxes	\$11,450
TN State taxes	\$700
Outsourced programming (LBMC)	\$43,698
Interest on loan for programming	\$4,480
Computers, software	\$7,326
Travel	\$4853
Rent	\$3883
Marketing efforts	\$2304
Tax services	\$3734
Office supplies	\$702
Entertainment	\$312
Man hours at market rate	\$1,300,000
	(Approx. 10,000 hours at \$130/hr)

**** Note:** Reimbursement capped at \$300,000 pursuant to the Asset Purchase Agreement

Schedule 2.3(h)

Offset against iCare Royalties and Guarantee Amounts

Impact of out-of-pocket costs resulting from breach:

If Seller breaches any of its obligations under the Master Consulting Services Agreement or the attached Statements of Work and Purchaser incurs out-of-pocket costs to replace such services, future iCare Royalty and Guarantee Amount payments will be affected as follows:

An amount (the “**Reduction Amount**”) equal to 150% of any expenditures that Purchaser is required to make in order to replace products and/or the services that it failed to receive in a timely fashion as a result of the breach will be treated as if it were a cash payment in respect of Purchaser’s obligation to pay iCare Royalties and Guarantee Amounts pursuant to Section 2.3 and the following section of this Schedule. No Reduction Amount will reduce an iCare Royalty and Guarantee Amount that has already been paid at the time that the breach takes place.

Impact of delays resulting from breach:

If Seller breaches any of its obligations under the Master Consulting Services Agreement or the attached Statements of Work and the completion of Version 2.0 of the iCare Software is delayed as a result, future Guarantee Amounts will be reduced as follows:

If the cumulative delay is 45 days or less,	No reduction
If the delay is more than 46 days beyond the 45 th day	\$1,100/day for each day

Any reductions to Guarantee Amounts required by this section shall be imposed before any reductions imposed by the preceding section of this Schedule.

Any reductions required by this section shall be imposed in the order that remaining Guaranteed Amounts are due.

This section can only reduce Guarantee Amounts. It cannot reduce iCare Royalties.

Schedule 2.3(i)

Royalty-Free, Non-Transferable License

Purchaser grants UT, its faculty and staff and its nursing, other health care and veterinary students a royalty-free, non-transferrable license to use the then most recent iCare product as follows:

Purchaser intends to commercialize a product incorporating, based on, or derived from the iCare Software (the "iCare product") as a web-based "software as a service." Once Purchaser commercializes the iCare product and for so long as it continues to operate the iCare platform and offer it for sale to nursing, other health care or veterinary students, all similarly-situated students of any UT or UT-affiliated facility located in Knoxville, Tennessee, shall be entitled to have access to and to use the commercialized iCare product (which shall include iCare Software and all case studies and other items that are made available to those who pay for the product, but shall not include content of a nature that is currently included in textbooks, workbooks and other printed materials) without cost to the student in connection with a course at UT.

In addition, once Purchaser commercializes the iCare product and for so long as it continues to operate the platform and offer it for sale to nursing or other health care professionals, all similarly-situated employees and faculty of any UT or UT-affiliated facility located in Knoxville, Tennessee (*e.g.*, the health care center) shall be entitled to have access to and to use the commercialized iCare product in connection with training activities conducted by their employers or UT without cost to the trainee in connection with such training activities.

In addition, if Purchaser elects to impose charges for the commercialized iCare product on the academic institution, its faculty members, staff or the trainers (either in addition to or in conjunction with a charge imposed on the students or trainees), for so long as Purchaser continues to operate the platform and offer it for sale to nursing, other health care or veterinary students or trainees, it will not impose a charge on UT or its faculty, staff, or trainers in any situation in which it would not have charged the end-user students or trainees in accordance with the preceding paragraph.

In no event will UT be entitled to resell or otherwise make the commercialized iCare product available to any person, unless that person is (i) a student of UT who physically attends in Knoxville, Tennessee, one or more classes associated with the use of the product or, (ii) an employee or faculty member of UT or any UT-affiliated facility who physically teaches or attends in Knoxville, Tennessee, one or more training classes associated with the use of the product.

Each such student's or trainee's (and possibly each faculty member's or trainer's) right to use the iCare product will have the same benefits, and will be subject to the same restrictions,

undertakings and limitations, that are granted to, and imposed on, paying students and trainees (and possibly faculty members and trainers).

Each teacher's, trainer's, student's and trainee's right to use the iCare product shall be subject to the completion of an online "once-per-course" evaluation or feedback form that will be designed to be completed in approximately ten minutes or less by each student or trainee and in approximately twenty minutes or less by a trainer or teacher.

In addition, (i) if a student is enrolled in any UT or UT-affiliated facility located in Knoxville, Tennessee; a class is conducted by such facility; and such student participates in such class remotely; then whether or not such student is physically present in Knoxville, Tennessee, such student and his or her teacher shall have the same rights under this Schedule as if such student physically attended in Knoxville, Tennessee, one or more classes associated with the use of the product, and (ii) if a nursing or health care professional has a place of employment at any UT or UT-affiliated facility located in Knoxville, Tennessee; a training activity or class is conducted by such employer; and such professional participates in such activity or class remotely; then whether or not such professional is physically present in Knoxville, Tennessee, such professional and his or her trainer shall have the same rights under this Schedule as if such professional physically attended in Knoxville, Tennessee, one or more training activities or classes associated with the use of the product.

Schedule 2.4

Purchase Price Allocation

To be determined by the Parties within 90 days after the Closing Date.

Schedule 4.4

Statements of Operations

As of November 10, 2010

Ordinary Income/Expense

Income

Uncategorized Income

100,000.00

Total Income

100,000.00

Gross Profit

100,000.00

Expense

General expenses

Development and IT

33,694.54

Entertainment

149.21

Marketing supplies

2,336.47

Other

940.02

Overhead

81.36

Tax related expenses

3,888.64

Total General expenses

41,090.24

NSF Expenses

F&A/Overhead

Service expenses

55.00

Supplies

105.44

F&A/Overhead - Other

2,065.33

Total F&A/Overhead

2,225.77

Other Expenses

Beta misc

430.78

Beta travel

1,144.29

Consulting Expenses

3,044.96

Subcontracts

10,639.44

Total Other Expenses

15,259.47

Research materials

Beta tester honorariums

3,169.22

Research materials - Other

7,105.61

Total Research materials

10,274.83

Salaries

Tami

5,068.65

Xueping

6,172.48

Payroll

1860.06

Total Salaries	13,101.19
Travel expenses	<u>4,925.39</u>
Total NSF Expenses	<u>43,926.59</u>
Total Expense	<u>86,876.89</u>
Net Ordinary Income	<u>13,123.01</u>
Net Income	13,123.01

Schedule 4.8(g)

Tax Liabilities

None.

Schedule 4.9(a)

Liabilities/Liens

See **Schedule 2.2(b)**.

Schedule 4.10(a)(i)

Intellectual Property

The iCare Software

CD 08082 – Creation disclosure to UTRF

iCare Academic, LLC logo (trademark application pending – Serial Number 77875242)

<http://www.icareacademic.com>

<http://support.icareacademic.com>

<http://www.icare-ehr.com>

Copyright application:

Service request: 1-481039811

Copyright application:

Service request: 1-481039800

Tracking number: 65971.cy

Schedule 4.10(a)(ii)

Licensed Intellectual Property

iCare v.1.0 Software Sublicense Agreement dated as of January 11, 2010, by and between Kent State University, Stark Campus, 6000 Frank Avenue NW, North Canton, Ohio 44720 and iCare Academic, LLC of Knoxville, Tennessee.

Schedule 4.10(a)(iii)

Product Offerings

iCare Software

Schedule 4.10(c)

Assigned Intellectual Property

Amended and Restated Basic Agreement by and between UT and UTRF dated as of the date hereof (replacing the Basic Agreement dated August 17, 2010).

Side Agreement by and between UTRF and iCare dated the date hereof.

Assignment of Intellectual Property by and between UTRF and iCare dated the date hereof.

Schedule 4.10(d)(i)

Developers

Matthew A. Bell
8919 Maple Ridge Lane
Knoxville, TN 37923

Chayawat Indranoi
191 Portland Drive
Lenoir City, TN 37771-6811

Xueping Li
1350 Pershing Hill Lane
Knoxville, TN 37919-0700

Tami H. Wyatt
2535 Coning Road
Maryville, TN 37803

Schedule 4.10(d)(ii)

Software Disclosures

LBMC had access to code in Fall, 2009, pursuant to the Master Services Agreement dated as of October 13, 2009 by and between iCare, LLC and LBMC Technologies, LLC.

Schedule 4.10(e)(i)

Software Documentation
(Additional Required Information)

None.

Schedule 4.10(e)(ii)

Software Errors and Bugs

Cannot save case when adding new patients using the "Create Template" or "Modify Template" links.	Instructor Panel
Cannot save case when patient data contains decimal numbers in the "Weight" or "Height" field.	Instructor Panel
No error trapping on "Student View" on certain controls from instructor login.	Instructor Panel
Case Data is not properly saved when encounter untrapped errors during edit.	Instructor Panel
Saving new cases adds null values to Clinician table.	Instructor Panel
Modifying case scenario note field changes scenario note on all linked cases.	Instructor Panel
List of case scenarios does not separated by institution.	Instructor Panel
Provider, Encounter number, and LOS do not display correctly.	Patient Census
Clinical notes with certain length do not display entirely.	Clinical Notes
Previous assessments count display incorrectly.	Assessment
WNL does not unchecked when assessment outside defined limit is changed.	Assessment
Untrapped data type error.	Vascular Access
"Person, Time, Place" RadioButton is checked when assessment begins.	Neurological
Incomplete business rules on some controls of assessment tabs.	Assessment

Schedule 4.11(a)

Material Contracts

Amended and Restated Basic Agreement by and between UT and UTRF dated as of the date hereof (replacing the Basic Agreement dated August 17, 2010).

Side Agreement by and between UTRF and iCare dated the date hereof.

Assignment of Intellectual Property by and between UTRF and iCare dated the date hereof.

iCare v.1.0 Software Sublicense Agreement dated as of January 11, 2010, by and between Kent State University, Stark Campus, 6000 Frank Avenue NW, North Canton, Ohio 44720 and iCare Academic, LLC of Knoxville, Tennessee.

Unexecuted iCare v.1.0 Software Sublicense Agreement, by and between Kennesaw State University of Kennesaw, Georgia and iCare Academic, LLC.

Unexecuted iCare v.1.0 Software Sublicense Agreement dated as of September 1, 2010, by and between Shenandoah University, 1775 North Sector Court, Winchester, VA 22601 and iCare Academic, LLC of Knoxville, Tennessee.

Software License, dated January 13, 2010, by and between iCare Academic, LLC and UTRF.

Master Services Agreement dated as of October 13, 2009 by and between iCare, LLC and LBMC Technologies, LLC.

Lease and Facility Use Agreement dated July 9, 2010, by and between iCare Academic, LLC and the University of Tennessee Research Foundation.

Consulting Agreement by and between Harry King and iCare Academic, LLC dated August 24, 2010 and effective January 1, 2010.

Consulting Agreement by and between Rich Berube and iCare Academic, LLC dated August 20, 2010 and effective February 1, 2010.

Letter Agreement by and between iCare Academic, LLC and the Center for Entrepreneurial Growth dated January 5, 2010 and executed August 25, 2010.

Consulting Agreement by and between iCare Academic, LLC and the Center for Entrepreneurial Growth dated August 25, 2010 and effective January 5, 2010.

Engagement Letter with the University of Tennessee Business Clinic dated September 29, 2009.

NSF sponsored grant associated with SBIR Phase I: Usability of iCare: An Academic Electronic Health Record Clinic Simulation Tool effective July 1, 2010.

Schedule 4.10(a)(ii)

Contracts for Licensed Commercial Software

All software used is commercially available, "off-the-shelf." Total cost with educational discount does not exceed \$5000.

- Windows Server 2008 R2 (two copies)
- SQL Server 2008
- Windows Server 2003 R2 (two copies)
- RDP/RDS CALs
- Visual Studio V2008
- Camtasia Studio 7
- Quickbooks Pro 2010
- Microsoft Project
- Visio Pro 2010
- Microsoft Office 2007 (multiple copies)

Schedule 4.11(b)

Contracts with or Relating to any Governmental Body

NSF sponsored grant associated with SBIR Phase I: Usability of iCare: An Academic Electronic Health Record Clinic Simulation Tool effective July 1, 2010.

Schedule 4.11(c)

Breach or Default of Material Contracts

None.

Schedule 4.13(a)

List of Employees

None.

Schedule 4.13(b)

List of Independent Contractors

Harry King

Rich Berube

Schedule 4.16

Authorizations, Consents and Notices Required

None.

Schedule 4.22

Transactions with Affiliates

None.

Schedule 4.23

Customers

Kennesaw State University

Kent State University

Shenandoah University

Schedule 4.24

Product Warranties

Warranty as stated in contracts provided to customers to date:

The Software is warranted by iCare against defects in workmanship and/or materials for the term of the Agreement and that the unmodified Software will perform substantially the functions described in the documentation. iCare shall, without charge, repair or replace such defective Software media for the term of the Agreement. Neither iCare nor UTRF warrants that the Software will work in combination with other products used by Sublicensee, that the Software will meet Sublicensee's requirements, that the operation of the Software will be error free, or that Software errors will be corrected. This warranty does not extend to any damage caused by accident, abuse, neglect or misuse of Software media by the Sublicensee. Sublicensee agrees to cooperate with iCare and UTRF by performing diagnostic tests provided to Sublicensee when Sublicensee initially seeks warranty service. Neither iCare nor UTRF warrants that the Software will work in combination with other products used by Sublicensee, that the Software will meet Sublicensee's requirements, that the operation of the Software will be error-free, or that all Software errors will be corrected.

Except as expressly set forth above, no other warranties, either express or implied, are made with respect to this Software, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, and iCare and UTRF expressly disclaim all warranties not stated herein. Sublicensee's sole remedies and the entire liability of iCare and UTRF are set forth above. In no event will iCare or UTRF be liable to Sublicensee or any other person for damages, expenses, lost profits, lost savings, or other damages arising out of use or inability to use such Software. Some states do not allow the limitation or exclusion of incidental or consequential damages for consumer products, so the above limitations or exclusions may not apply to Sublicensee.

Schedule 6.3(a)

Non-Competition and Non-Solicitation

Matthew A. Bell

Chayawat Indrano

Xueping Li

Tami H. Wyatt

Harry King

Schedule 6.3(b)

Protocols and License Rights

If a UT faculty member or graduate students desires to incorporate WKH Confidential or Proprietary Information in a Scholarly Presentation, then

- a. If any such WKH Confidential or Proprietary Information is not UT Developed Confidential or Proprietary Information, such faculty member or graduate student must first obtain WKH's advance written consent.
- b. If all such WKH Confidential or Proprietary Information is UT Developed Confidential or Proprietary Information, such faculty member or graduate student must first inform WKH in writing about the nature of what is to be incorporated, the nature of the Scholarly Presentation and the timing of the Scholarly Presentation, and such faculty member or graduate student and WKH shall engage in commercially reasonable discussions to determine what, if any, limitations should be imposed on such faculty member's or graduate student's ability to incorporate such WKH Confidential or Proprietary Information, giving due regard for publication schedules and WKH's ability to take practical advantage of its technology.

"Scholarly Presentation" means a book that is not a trade book, an article that appears in a peer-reviewed scholarly or academic periodical, an oral presentation at an academic conference, and a paper or poster accepted by an academic conference.

"UT Developed Confidential or Proprietary Information" means WKH Confidential or Proprietary Information but only to the extent developed or created by a Developer prior to the date hereof and transferred or licensed to WKH in connection herewith or developed or created by a Developer after the date hereof pursuant to the Master Consulting Agreement.

"WKH Confidential or Proprietary Information" means Confidential Information and any future confidential or proprietary information developed, acquired or owned by WKH, including without limitation any such confidential or proprietary information acquired pursuant to the Master Consulting Agreement and/or any other license or assignment from iCare or a student or teacher of UT.

Exhibit A

Royalty Calculations

Bundling:

It is anticipated that the commercialized iCare Software will be sold in both a "stand-alone" version and a "bundled" version, that each version will have a separate price, and that the "bundled" price will be lower than the "stand-alone" price. In most "bundles" offered by purchaser, either (i) the print components are priced the same as the "stand-alone" versions and the "add-on" components are discounted, or (ii) all components are discounted, but the "add-on" components are discounted more heavily than the print components.

In this regard, it should be noted that the print components are typically updated once every three or four years and are often sold in the secondary market. If a student purchases a used print component from another student, the purchasing student will be required to purchase a "stand-alone" version of the iCare product because the selling student's right to use the iCare product will generally be limited to the run of course for which he or she bought the print component and will not be transferable. Therefore, the "stand-alone" sales of the iCare product will be an important revenue stream to Purchaser.

Although Purchaser generally retains the right to set both the "stand-alone" and "bundled" prices of each component in its sole discretion, Purchaser agrees that, for purposes of computation of iCare Royalties under this Agreement, the "bundled" price of the iCare product will not be less than 40% of its "stand-alone" price. If, for any reason, the iCare product is sold at a "bundled" price that is less than 40% of its "stand-alone" price, the royalty associated with that sale will be as follows:

The product of (i) the 18% royalty rate, (ii) 40% of its "stand-alone" price, and (iii) a fraction, the numerator of which is the cost of the entire bundle minus the excess of 40% of the iCare product's "stand-alone" price over its "bundled" price, and the denominator of which is the cost of the entire bundle.

Example:

Assume (i) a stand alone price of \$50 for the iCare product, (ii) iCare product gets bundled at a 75% discount with other content, (iii) the other content has a stand alone price of \$150, and (iv) the other content is discounted at 10% for a total bundled price of \$147.50; the royalty will be $18\% * (40\% * \$50) * (\$147.50 - \$7.50) / (\$147.50)$ which simplifies to $0.18 * \$20 * 0.95 = \3.42