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**Wolters Kluwer Health Unanimous Written Consent of Directors in  
Lieu of a Meeting 11-23-10**

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**WOLTERS KLUWER HEALTH, INC.  
UNANIMOUS WRITTEN CONSENT OF DIRECTORS  
IN LIEU OF A MEETING**

The undersigned, being all of the Directors (the "Directors") of Wolters Kluwer Health, Inc., a Delaware corporation (the "Corporation"), hereby take the following actions and consent to, approve and adopt the following resolutions without a meeting, pursuant to Section 141(f) of the General Corporation Law of the State of Delaware (the "DGCL"):

I. Approval of Transaction and Purchase Agreement.

RESOLVED, that the Purchase Agreement, in substantially the form attached hereto as Exhibit A, by and between the Corporation and iCare Academic, LLC., a Tennessee limited liability company (the "Purchase Agreement"), as well as all of the related transactions and ancillary documents contemplated by the Purchase Agreement, be, and each of them hereby is, authorized, adopted and approved.

FURTHER RESOLVED, that each of the officers of the Corporation (the "Officers") be and hereby is authorized and directed to take all actions necessary, advisable or appropriate on behalf of the Corporation to negotiate, prepare, execute, deliver, and, where applicable, file and to cause the Corporation to perform the actions contemplated by, the Purchase Agreement and all of the other agreements, instruments and documents referred to in the Purchase Agreement, together with such additions, modifications or changes in the terms thereof as such Officer or Officers may determine to be necessary, appropriate or advisable, such determination to be conclusively evidenced by the execution and delivery thereof, or the taking of any other actions with respect thereto, by such Officer or Officers on behalf of the Corporation.

II. Miscellaneous.

RESOLVED, that the Officers, and each of them individually, be and hereby are authorized and directed to take all other actions on behalf of the Corporation, including without limitation the negotiation, preparation, execution, delivery and performance of any other agreements, amendments, certificates, guarantees, documents or other instruments (including any filings with any Secretaries of State or other governmental authorities), as such Officers or any of them acting alone may deem necessary, advisable or appropriate in their individual discretion to consummate (or facilitate the consummation of) the transactions contemplated by these resolutions on behalf of the Corporation.

FURTHER RESOLVED, that the execution on behalf of the Corporation by the Officers, or any one of them, of any agreement, amendment, certificate, guarantee, document or other instrument authorized by these resolutions, or executed in the accomplishment of

any action or actions so authorized, is and shall become upon delivery the enforceable and binding act and obligation of the Corporation.

FURTHER RESOLVED, that any and all actions heretofore taken by the Officers of the Corporation or any other agent of the Corporation, on behalf of the Corporation, with respect to the foregoing resolutions are hereby ratified, approved and confirmed in all respects.

This consent may be signed in counterparts and shall be filed with the minutes of the Corporation.

*[Signatures appear on following page.]*

The foregoing unanimous written consent is dated as of November 23, 2010.

  
John J. Lynch, Jr.

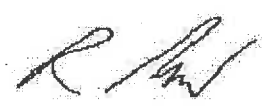
\_\_\_\_\_  
Robert Becker

\_\_\_\_\_  
Kevin Entricken

Being all of the Directors of Wolters Kluwer Health, Inc.

The foregoing unanimous written consent is dated as of November 23, 2010.

\_\_\_\_\_  
John J. Lynch, Jr.



\_\_\_\_\_  
Robert Becker



\_\_\_\_\_  
Kevin Entricken

Being all of the Directors of Wolters Kluwer Health, Inc.

**EXHIBIT A**

**Purchase Agreement**

**ASSET PURCHASE AGREEMENT**  
**BY AND BETWEEN**  
**ICARE ACADEMIC, LIMITED LIABILITY COMPANY**  
**AND**  
**WOLTERS KLUWER HEALTH, INC.**  
**(ON BEHALF OF ITS LIPPINCOTT WILLIAMS & WILKINS BUSINESS)**  
**Dated as of December 1, 2010**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of December 1, 2010 (the "**Effective Date**"), is entered into by and between iCare Academic, Limited Liability Company, a Tennessee limited liability company ("**iCare**" or "**Seller**"), and Wolters Kluwer Health, Inc., a Delaware corporation ("**WKH**" or "**Buyer**"), on behalf of its Lippincott Williams & Wilkins business ("**LWW**").

WHEREAS, Seller is engaged in designing, maintaining, writing, updating, upgrading, licensing, supporting and installing software relating to eHRs, including the use of such software to teach nursing, other health care and veterinary students and professionals (the "**Business**");

WHEREAS, Seller desires to sell, and Buyer desires to purchase, substantially all of the assets, properties, rights and interests used or held for use in the Business in consideration of certain payments by Buyer and the assumption by Buyer of certain specified liabilities, all as specifically disclosed and on the terms and conditions set forth herein; and

WHEREAS, concurrently with the sale of the assets and the assumption of certain liabilities, each as specified herein, Seller will enter into the Seller Documents, and Buyer will enter into the Buyer Documents.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements hereinafter contained, and intending to be legally bound hereby, the parties hereby agree as follows:

### ARTICLE I - DEFINITIONS

#### 1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"**Acquired Assets**" has the meaning set forth in Section 2.1(a).

"**Acquired Intellectual Property**" has the meaning set forth in Section 4.10(b).

"**Affiliate**" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "**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 and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

"**Allocation Schedule**" has the meaning set forth in Section 2.4(a).

**"Approved Indemnification Claim"** has the meaning set forth in Section 8.4(b).

**"Assumed Liabilities"** has the meaning set forth in Section 2.2(a).

**"Benefit Plans"** has the meaning set forth in Section 4.12.

**"Books and Records"** has the meaning set forth in Section 4.5.

**"Business"** has the meaning set forth in the WHEREAS clause.

**"Business Day"** means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

**"Buyer Documents"** has the meaning set forth in Section 5.2.

**"Buyer Indemnified Party"** and **"Buyer Indemnified Parties"** have the meanings set forth in Section 8.2.

**"Closing Date"** has the meaning set forth in Section 3.1.

**"Code"** means the Internal Revenue Code of 1986, as amended (together with all rules and regulations promulgated thereunder).

**"Commercial Use"** means to use, make, offer to sell, sell, import, license, sublicense, install, operate, maintain, support, update, modify, design, develop, create, copy, publish or distribute, or to otherwise commercialize in any manner. Commercial Use shall include use to teach, test and assess students.

**"Confidential Information"** has the meaning set forth in Section 6.4(a).

**"Contracts"** means contracts, agreements, licenses, leases, obligations, commitments, undertakings, sales, orders (including delivery orders, purchase orders and change orders), and blanket purchase agreements (whether written or oral, express or implied).

**"Customer Prepayment Amounts"** means the portion of any prepayment amounts, relating to any customer license or beta-testing agreement that is assigned to Buyer, which is unearned as of the Closing Date.

**"Change of Control"** means either (i) a sale by WKH of more than sixty (60) percent of the voting securities of WKH to a Person who is not an Affiliate of WKH or (ii) the sale or disposition by WKH of all or substantially all of its assets to a Person who is not an Affiliate of WKH.

**"Developers"** has the meaning set forth in Section 4.10(d).

"Dispute Notice" has the meaning set forth in Section 8.4(b).

"Dispute Period" has the meaning set forth in Section 8.4(b).

"eHR" means electronic health or medical records.

"Environmental Law" means any Law or other legal requirement relating to the protection of human health and safety, the environment or natural resources, or discharges of Hazardous Materials.

"ERISA" has the meaning set forth in Section 4.12.

"Excluded Assets" has the meaning set forth in Section 2.1(b).

"Excluded Contracts" has the meaning set forth in Section 2.1(b)(vii).

"Excluded Liabilities" has the meaning set forth in Section 2.2(b).

"Existing Customer" means any Person (or an Affiliate thereof) to which Seller or any Affiliate provided services or products of the Business during the two years immediately preceding the Closing Date.

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

"Geographic Area" means Asia, Australia, Europe, South America, and North America.

"Governmental Body" means any government or governmental or regulatory entity, body thereof, or political subdivision thereof, whether federal, state, local, foreign, or supranational, and any agency, instrumentality or authority thereof or any other entity exercising executive, legislative, judicial, regulatory or administrative functions or pertaining to government, including any department, board, commission, court or tribunal.

"Guarantee Amount" means \$250,000.

"Hazardous Material" means any substance, material or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as "hazardous," "toxic," "pollutant," "contaminant," "radioactive," or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold and urea formaldehyde insulation.

"iCare Royalty" for a calendar year means the product of 18% and that calendar year's gross revenues (less bad debts and returns) of products commercialized by WKH based on the iCare Software. Sales shall be allocated among calendar years in accordance with GAAP, except that any sale for a semester that ends after November 30 and before February 1 shall be deemed to have been for a semester that ends on December 31.

To the extent the iCare Software is sold as part of a bundle rather than as a stand-alone product, for purposes of calculating the iCare Royalty, the value of the bundled iCare Software shall be calculated as set forth on Exhibit A.

**"iCare Software"** means Seller's software and all associated content and includes, without limitation, Seller's software to support the teaching, testing and assessment of nursing, other health care and veterinary students and professionals relating to their ability to (i) work with eHRs and to access, record and query them, (ii) engage in patient teaching and care planning and mapping in connection with eHRs, and (iii) participate in medical billing and coding in connection with eHRs, as such software exists as of the date hereof, including source code, object code, any related interfaces and workflow tools, all technical, development, operational, end-user, and marketing documentation, third party license rights, dashboards, screen views, what appears to be actual patient health information (but in fact is based on fictional persons with fictional health conditions), database support, stored lists, and business rules.

**"Indemnified Party"** has the meaning set forth in Section 8.4(a).

**"Indemnifying Party"** has the meaning set forth in Section 8.4(a).

**"Indemnity Cap"** has the meaning set forth in Section 8.5(b)(i).

**"Intellectual Property"** means (a) patents, patent applications, inventions and statutory invention registrations, (b) registered trademarks (where the term "trademark" as used in this Agreement includes all trademarks of any type, including service marks, certification marks and all other indicia of source or origin) and applications for same, including all goodwill associated therewith, (c) unregistered copyrights, registered copyrights and applications for same, (d) trade names, logos, common law and unregistered trademarks, Internet domain names, Internet and World Wide Web URLs or address, unregistered works of authorship, (e) computer software, records and data, including business rule data and user interface data, (f) confidential and proprietary information, including trade secrets and know how, and (g) all other intellectual property.

**"Intellectual Property Assignment"** has the meaning set forth in Section 7.1(a).

**"IRS"** means the Internal Revenue Service.

**"Knowledge", "Known by" or "Known"** (and any similar phrase) means that an individual will 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 would be expected to be aware of such fact or other matter in the course of performing his or her duties or responsibilities within the scope of his or her respective job duties, if applicable, concerning the existence of such fact or other matter. For purposes of this Agreement, the "Seller's Knowledge" of a particular fact or other matter means the Knowledge of Matthew

Arthur Bell, Chayawat Indranoi, Xueping Li, Tami Hodges Wyatt, Harry King and Rich Berube.

"**Law**" means any foreign, federal, state or local law, statute, code, ordinance, rule, regulation, requirement, Order, announcement or other binding action or requirement of any Governmental Body.

"**Legal Proceeding**" means any action, complaint, claim, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving any court or other Governmental Body or any arbitrator or arbitration panel.

"**Liability**" means any debt, liability, guarantee, assurance, commitment or obligation, whether known or unknown, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, asserted or unasserted, due or to become due, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be stated in financial statements or disclosed in the notes thereto.

"**Licensed Commercial Software**" has the meaning set forth in Section 4.10(a).

"**Licensed Intellectual Property**" has the meaning set forth in Section 4.10(a).

"**Licensed Software**" means the software that is licensed for use by Seller and is included in the Licensed Intellectual Property.

"**Lien**" means, with respect to any asset, any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, assessment, easement, servitude, covenant, reservation, license, ownership interest of another Person, or encroachment.

"**Loss**" or "**Losses**" have the meanings set forth in Section 8.2.

"**Master Consulting Agreement**" has the meaning set forth in Section 7.1(b).

"**Material Adverse Effect**" means any existing fact, condition, development, change, event, circumstance or effect that has, or could reasonably be expected to have, individually or in the aggregate with all other existing facts, conditions, developments, changes, events, circumstances or effects, (a) a material adverse effect on the business, operations, results of operations, financial condition, prospects, assets or liabilities of the Business or materially diminish the value of the Business or (b) the effect of preventing, materially delaying, making illegal or otherwise materially interfering with the

consummation of the transactions contemplated by this Agreement, the Buyer Documents and the Seller Documents.

**"Material Contracts"** has the meaning set forth in Section 4.11(a).

**"Open Source Software"** means computer software distributed pursuant to a license or other agreement that requires licensees to disclose or otherwise make available the source code for any software incorporating or using such licensed software or developed using such licensed software, or to distribute or make available such software on terms specified in such license or agreement, including the GNU General Public License (GPL) or the GNU Lesser General Public License (LGPL).

**"Order"** means any order, award, decision, injunction, judgment, decree, ruling, subpoena, writ, assessment, verdict or arbitration award entered, issued, made or rendered by any Governmental Body.

**"Ordinary Course of Business"** means an action taken or not taken with respect to the Business that is consistent with the Business' past practices during the 12 months prior to the date of this Agreement (including with respect to quantity, nature, magnitude and frequency) and is taken in the ordinary course of the normal day-to-day operations of the Business.

**"Organizational Documents"** has the meaning set forth in Section 4.1(b).

**"Permits"** means any approvals, authorizations, consents, licenses, permits, registrations, qualifications or certificates of a Governmental Body.

**"Person"** means any individual, corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

**"Privacy Laws"** means any Law requiring protection from improper use or disclosure of confidential financial or personal data and information regarding customers of the Business.

**"Product Offering"** has the meaning set forth in Section 4.10(a).

**"Prospective Customer"** means any Person (or its Affiliates) to which Seller or its Affiliates has submitted a written or oral proposal for the sale or provision of any products or services related to the Business during the two (2) years immediately preceding the Closing Date, provided that mass mailings or e-mail "blasts" by Seller will not be deemed to be submissions of a "written or oral proposal" for purposes of this definition.

**"Royalty Year"** means 2011, 2012, 2013, 2014 or 2015.

**"Schedules"** means the Schedules accompanying this Agreement.

"**Seller Documents**" has the meaning set forth in Section 4.2.

"**Seller Indemnified Party**" and "**Seller Indemnified Parties**" have the meanings set forth in Section 8.3.

"**Software Documentation**" has the meaning set forth in Section 4.10(e).

"**Statements of Operations**" means (i) the unaudited statements of operations of the Business for the 12 month periods ended each of December 31, 2008, and December 31, 2009 and (ii) the unaudited statement of operations of the Business for the quarter ended September 30, 2010.

"**Taxes**" means (a) all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments with respect to Seller, the Business or the Acquired Assets, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, alternative, environmental, inventory, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property (real or personal) and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, and (b) all interest, penalties, fines, additions to Tax or additional amounts imposed by any taxing authority in connection with any item described in clause (a).

"**Tax Return**" means all returns, declarations, reports, estimates, information returns and statements required to be filed by Seller with respect to the Business or the Acquired Assets in respect of any Taxes.

"**Third Party Claim**" has the meaning set forth in Section 8.4(a).

"**Threshold Amount**" has the meaning set forth in Section 8.5(b)(i).

"**UT**" means the University of Tennessee (Knoxville).

"**UTRF**" means the University of Tennessee Research Foundation.

"**UTRF Intellectual Property License**" has the meaning set forth in Section 7.1.

"**WKH Intellectual Property License**" has the meaning set forth in Section 7.1.

## **1.2 Other Definitional and Interpretive Matters.**

Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) **Calculation of Time Period.** When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to



this Agreement, the date that is the reference date in calculating such period shall be excluded (for example, if an action is to be taken within two days of a triggering event, and such event occurs on a Tuesday, then the action must be taken by Thursday). If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) **Dollars.** Any reference in this Agreement to \$ shall mean U.S. dollars.

(c) **Schedules.** The Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

(d) **Headings.** The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

(e) **No Drafting Presumptions.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other agreements contemplated hereby and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(f) **Construction.** Words used in this Agreement in the singular number shall include the plural, and vice versa, unless the context requires otherwise. Words of gender used in this Agreement may be read as masculine, feminine or neuter as the context may require. The terms "this Agreement," "hereto," "herein," "hereby," "hereunder," "hereof" and similar expressions refer to this Agreement (including the Schedules hereto) in its entirety and not to any particular provision or portion of this Agreement unless the context clearly provides otherwise. Whenever the words "include," "includes" or "including" are used herein, they shall be deemed to be followed by the words "without limitation."

## ARTICLE II- PURCHASE AND SALE OF ASSETS

### 2.1 Purchase and Sale of Assets.

(a) At the Closing Seller will sell, assign, transfer and deliver to Buyer, and Buyer will purchase and acquire from Seller, all right, title and interest in and to the Acquired Assets, free and clear of all Liens, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, "**Acquired Assets**" shall mean all of Seller's assets used or held for use in the Business, including the following (but excluding in all cases the Excluded Assets):

(i) the Acquired Intellectual Property, together with all rights associated

therewith, including the right to sue and collect for any past, present or future infringement, misappropriation or unauthorized use thereof, and any goodwill associated with any trademarks included therein;

(ii) the "Acquired Contracts" specified in Schedule 2.1(a)(ii);

(iii) all rights under or pursuant to warranties and guarantees made by suppliers, manufacturers or contractors in connection with products or services provided to the Business and all other claims and rights against third parties relating to the Acquired Assets or Assumed Liabilities;

(iv) any and all of Seller's and Seller's Affiliates' claims, causes of action, choses in action, rights of recovery, rights of setoff, rights of recoupment and other rights of any kind against third parties related to the conduct of the Business, the Acquired Assets or the Assumed Liabilities;

(v) except as otherwise provided in Schedule 2.1(a)(v), any rights in, relating to, or for use or exploitation of, any trademark, trade name, corporate name and domain name that includes, is based on, relates to or is likely to be confused with the terms "iCare," or any other similar term or derivative thereof; and

(vi) marketing and survey materials including customer contract information, mailing lists and other marketing, sales or customer prospect information relating to the Business and/or the iCare Software.

(b) Notwithstanding anything to the contrary contained in this Agreement, Seller shall retain all of its right, title and interest in and to, and will not sell, transfer, assign, convey or deliver to Buyer, and the Acquired Assets will not include the following (collectively, the "**Excluded Assets**"):

(i) any cash or cash equivalents, including any investment accounts, marketable securities or certificates of deposit, or any collected funds or items in the process of collection at Seller's financial institutions through and including the Closing Date except for any vendor deposits;

(ii) any accounts receivable or notes receivable;

(iii) inventory and supplies;

(iv) tangible personal property, including equipment, computers, servers, and peripheral equipment;

(v) any rights under any Tax allocation or sharing agreement;

(vi) any real property leased or owned by Seller and all fixtures thereon;

(vii) the Contracts set forth on Schedule 2.1(b)(vii) (the "**Excluded**

**Contracts");**

(viii) any rights of Seller or the Seller Indemnified Parties under this Agreement, the Buyer Documents and the Seller Documents;

(ix) the Books and Records; provided, however, that Buyer shall be entitled to acquire, at its own expense, copies of any materials reasonably necessary for its human resources, accounting, tax or legal purposes;

(x) any other assets, rights and properties set forth on Schedule 2.1(b)(xi);  
and

(xi) any other assets, Contracts, rights and properties not used or held for use in the Business.

**2.2 Assumed and Excluded Liabilities.**

(a) On the terms and subject to the conditions contained in this Agreement and except as otherwise provided in Section 2.2(b), at the Closing, Buyer will assume and thereafter timely pay, perform or otherwise discharge the following liabilities and obligations of Seller related exclusively to the Business (the "**Assumed Liabilities**"):

(i) At the Closing, Buyer will assume Seller's obligations under the Acquired Assets solely to the extent such obligations first arise and must be performed from and after the Closing Date, were incurred in the ordinary course and are not past due or the result of any action, inaction, breach, violation or default by Seller occurring on or prior to the Closing Date.

(b) Notwithstanding any other provision of this Agreement, other than the Assumed Liabilities, Seller shall retain, and Buyer shall not assume or become responsible or liable with respect to any, liabilities or obligations of Seller (collectively, the "**Excluded Liabilities**"). By way of example and not of limitation, Buyer will not be responsible or liable for any of the following liabilities or obligations of Seller (each of which will constitute an Excluded Liability):

(i) any liability or obligation of Seller or any of its Affiliates, or any of their respective directors, officers, security holders, members, managers or agents, that is imposed upon or assumed by such Persons pursuant to this Agreement or the transactions contemplated hereby;

(ii) any liability or obligation relating to, based in whole or in part on events or conditions occurring or existing in connection with, or arising out of, any Excluded Asset;

(iii) any liability or obligation arising out of, or relating to, Taxes of Seller, including any Taxes arising as a result of Seller's operation of the Business or ownership of the

Acquired Assets prior to the Closing Date, or any of the transactions contemplated by this Agreement;

(iv) any liability or obligation of Seller under any Environmental Law arising from or relating to the ownership, performance, operation, use or possession of the Business, Acquired Assets or Assumed Liabilities prior to the Closing Date;

(v) any indebtedness for borrowed money or guarantees, make-whole or keep well Contracts in connection therewith;

(vi) any liabilities and obligations arising out of or relating to Contracts between the Business, on the one hand, and Seller and/or any of its Affiliates, on the other hand;

(vii) any liabilities and obligations arising out of, or relating to, any intercompany payables, accounts and notes payable and other obligations of the Business to make payment in favor of, discharge or otherwise be responsible for the liabilities or obligations of Seller or any of its Affiliates;

(viii) any worker's compensation liabilities, liabilities arising out of, or relating to, any Legal Proceeding involving Seller or its Affiliates whether or not related to the Acquired Assets or the Business, and liabilities related to the use or ownership of the Acquired Assets or the Business by Seller or any predecessor in interest;

(ix) any liability or obligation arising out of, or relating to, the failure of Seller to obtain any Permits material to or necessary for the conduct of the Business prior to the Closing;

(x) any liabilities or obligations arising out of, or relating to, any current or former employees or consultants of the Business and their beneficiaries and other employee, employment related or compensation or benefit plan related liabilities, including (A) with respect to Laws regarding employment arising or incurred on or prior to the Closing Date or as a result of the transactions contemplated by this Agreement and (B) any liability arising out of, or relating to, any key employee retention plans, any "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended), and COBRA coverage for employees or consultants of Seller or the Business terminated prior to or as part of the consummation of the transactions contemplated by this Agreement;

(xi) any liabilities or obligations attributable to, arising out of or relating to, any actual or deemed breach or default, or any facts or circumstances that could give rise to such a breach or default, pursuant to any Contract other than the Acquired Contracts;

(xii) any liability for commissions or similar sales incentives payable to employees of the Business arising prior to the Closing; and

(xiii) the other liabilities specifically described on Schedule 2.2(b).

### **2.3 Purchase Price; Royalties.**

(a) At Closing, WKH will reimburse the Seller's development and operating costs related to the Acquired Assets that are listed on **Schedule 2.3(a)** and that are evidenced with appropriate support; such reimbursement not to exceed \$300,000.

(b) On January 31, 2011, WKH will pay iCare \$500,000 by bank wire transfer to an account specified in writing by Seller.

(c) Not later than April 1, 2012, WKH will pay iCare the 2011 iCare Royalty by bank wire transfer to an account specified in writing by Seller.

(d) Not later than February 15, 2013, WKH will pay iCare the Guarantee Amount by bank wire transfer to an account specified in writing by Seller. Not later than April 1, 2013, WKH will pay iCare the excess of the 2012 iCare Royalty over the Guarantee Amount, if any, by bank wire transfer to an account specified in writing by Seller.

(e) Not later than February 15, 2014, WKH will pay iCare the Guarantee Amount by bank wire transfer to an account specified in writing by Seller. Not later than April 1, 2014, WKH will pay iCare the excess of the 2013 iCare Royalty over the Guarantee Amount, if any, by bank wire transfer to an account specified in writing by Seller.

(f) Not later than February 15, 2015, WKH will pay iCare the Guarantee Amount by bank wire transfer to an account specified in writing by Seller. Not later than April 1, 2015, WKH will pay iCare the excess of the 2014 iCare Royalty over the Guarantee Amount, if any, by bank wire transfer to an account specified in writing by Seller.

(g) Not later than April 1, 2016, WKH will pay iCare the 2015 iCare Royalty by bank wire transfer to an account specified in writing by Seller.

(h) If iCare defaults in its obligations under the Master Consulting Agreement and the attached Statements of Work, the amounts otherwise due under **Sections 2.3(c) through (g)** above shall be reduced as provided in **Schedule 2.3(h)**.

(i) Pursuant to this Agreement, UT, its faculty and its nursing, other health care and veterinary students will be granted a royalty-free, non-transferrable license to use the then most recent iCare product. This usage grant is more particularly described in **Schedule 2.3(i)**.

(j) Buyer agrees that in the event of a Change of Control of WKH, the Guarantee Amounts due under **Sections 2.3(d) through (f)** above, to the extent not already paid, shall become immediately due and payable to the Seller.

### **2.4 Allocation of Purchase Price.**

(a) Within 90 days after the Closing Date, Buyer and Seller shall mutually agree on the allocation of the purchase price (including Assumed Liabilities) among the

assets of the Business according to their relative fair market values on the Closing Date, provided that the parties agree that Buyer's noncompetition rights shall be valued at \$25,000. Within such 90 days, Buyer shall prepare and deliver to Seller a proposed schedule (the "**Allocation Schedule**") setting forth such allocation among the Acquired Assets. The Allocation Schedule as it relates to the Business will be prepared in accordance with Section 1060 of the Code and the rules and regulations promulgated thereunder. If Seller reasonably disagrees with the allocation reflected in the Allocation Schedule delivered by Buyer, Seller and Buyer shall cooperate in good faith to resolve such dispute and will revise the Allocation Schedule to incorporate any changes agreed to by the Parties.

(b) Unless Buyer and Seller are unable to agree to an Allocation Schedule, Buyer and Seller agree to file all tax returns consistent with the Allocation Schedule (including Buyer's completion of Form 8594, and any other forms, statements, or returns required by the Code, the IRS, or any applicable state or local taxing authority). If Buyer and Seller are unable to agree on an Allocation Schedule within 180 days after the Closing Date, each party will use its own allocation schedule consistent with its own allocation of the purchase price.

(c) Buyer and Seller agree to promptly provide the other party with any additional information and reasonable assistance required to complete all forms or compute taxes arising in connection with (or otherwise affected by) the transactions contemplated hereunder.

### ARTICLE III - CLOSING

#### 3.1 Closing.

The closing of the transactions contemplated hereby (the "**Closing**") shall be effectuated by electronic exchange of documents, with copies of original, executed documents subsequently exchanged at the convenience of the parties promptly after the Closing. The Closing may take place at the offices of Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603 (or at such other place as Buyer and Seller may designate in writing) concurrent with the execution of this Agreement or at such other time and place as the parties mutually agree. The date on which the Closing shall occur is referred to in this Agreement as the "**Closing Date**." The Closing will be effective for all purposes at 12:01 a.m. (Central time) on the Closing Date.

### ARTICLE IV- REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer, as of the date hereof, that the following statements are true and correct. The Schedules have been arranged in sections that correspond to the sections contained in this **Article IV**.

#### 4.1 Organization and Good Standing of Seller.

(a) Seller is a Tennessee limited liability company duly organized, validly existing and in good standing under the laws of the State of Tennessee, and it has all requisite power and authority and material Permits to own, operate, lease and otherwise hold its assets and to carry on the Business as it is now being conducted and as it is currently intended to be conducted. Seller is duly licensed or qualified to do business as a foreign corporation and is in good standing in each other jurisdiction in which it owns, operates, leases or otherwise holds assets, or conducts business, so as to require such qualification. Seller has no Subsidiaries.

(b) Seller has furnished to Buyer true, correct and complete copies of its articles of organization and operating agreement, each as amended and as in effect on the date of this Agreement (collectively, the "**Organizational Documents**").

#### **4.2 Authorization of Agreement.**

Seller has all requisite power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Seller in connection with the consummation of the transactions contemplated hereby and thereby (the "**Seller Documents**"), and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Seller Documents by Seller and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Seller. This Agreement has been, and as of the completion of the Closing each of the Seller Documents will have been, duly and validly executed and delivered by Seller, and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement and each Seller Document constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

#### **4.3 Conflicts; Consents of Third Parties.**

(a) Neither the execution and delivery by Seller of this Agreement or the Seller Documents, the consummation of the transactions contemplated hereby or thereby, nor the compliance by Seller with any of the provisions hereof or thereof will, directly or indirectly:

(i) contravene, conflict with or result in a violation of (A) the articles of organization or the operating agreement of Seller, or (B) any resolution adopted by the managers or members of Seller;

(ii) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge the transactions contemplated by this Agreement or the Seller Documents under, any Law applicable to Seller, the Business, the

Acquired Assets or the Assumed Liabilities, including Privacy Laws, or any Order to which Seller, the Business, the Acquired Assets or the Assumed Liabilities is subject;

(iii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Permit that is held by Seller with respect to the Business, the Acquired Assets or the Assumed Liabilities;

(iv) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Acquired Contract; or

(v) result in the imposition or creation of any Lien, upon or with respect to any of the Acquired Assets.

(b) No consent, waiver, approval, Order, Permit, declaration or filing with, or notification to, any Person, under any Acquired Contract or Governmental Body, is required on the part of Seller in connection with the execution and delivery of this Agreement or the Seller Documents or the compliance with any of the provisions hereof or thereof, or the consummation of the transactions contemplated hereby and thereby.

#### **4.4 Statements of Operations.**

(a) **Schedule 4.4** sets forth the Statements of Operations. The Statements of Operations (i) are true and complete in all material respects, (ii) are consistent with the Books and Records and (iii) fairly present the financial condition and results of operations of the Business as of the dates and for the periods indicated therein.

#### **4.5 Books, Records and Accounts.**

The books, records and accounts of Seller maintained in connection with the Business (including (i) books and records relating to the purchase of materials and supplies, the creation or processing of products, sales or licenses of products and/or services, dealings with customers, customer financial data and information, invoices, customer lists, inventories, supplier lists, personnel records and Taxes, and (ii) computer software and data in computer readable and human readable form used to maintain such books and records together with the media on which such software and data are stored and all documentation relating thereto) (collectively, the "**Books and Records**") accurately reflect in reasonable detail all material transactions relating to the Business.

#### **4.6 No Undisclosed Liabilities.**

Seller has no material Liabilities of any nature related to the Business other than those set forth on **Schedule 4.9(a)**.



#### 4.7 Absence of Certain Developments.

(a) Except as contemplated by this Agreement, since December 31, 2009, (i) Seller has conducted the Business in the Ordinary Course of Business, and (ii) there has not been any event, condition or change that individually or in the aggregate constitutes a Material Adverse Effect, and no events, facts or circumstances exist individually or in the aggregate, that have or could reasonably be expected to have a Material Adverse Effect.

(b) Without limiting the generality of Section 4.7(a), since December 31, 2009, Seller has not:

(i) except as set forth on Schedule 4.9(a), sold, leased, pledged, permitted the imposition of any Lien upon, licensed, transferred, assigned or otherwise disposed of any of the Acquired Assets;

(ii) changed any of the accounting principles or accounting practices used by it in the preparation of any of the Business's financial statements or the Statements of Operations, changed its pricing policies or payment or credit practices, changed the rate or timing of its payment of accounts payable or its collection of accounts receivable or deferral of revenue, or failed to pay any creditor any amount owed to such creditor when due or granted any extensions or credit;

(iii) entered into, accelerated, terminated, modified or amended any Contract that would constitute a Material Contract;

(iv) taken or failed to take any action that would, with notice or the lapse of time or both, permit the termination or non-renewal of, or a breach or default under, any Material Contract;

(v) entered into any settlement of a pending or threatened Legal Proceeding;

(vi) experienced any damage, destruction or loss (whether or not covered by insurance) to any of the Acquired Assets that has a book value in excess of \$5,000;

(vii) except as set forth on Schedule 4.9(a), mortgaged, pledged, or otherwise subjected to any Lien any of the Acquired Assets,

(viii) established, entered into or adopted any Benefit Plan, caused or permitted any Benefit Plan to be amended (other than as required to comply with any Law) or waived any of its material rights under, or permitted or provided for the acceleration or vesting or payment under, any provisions of any Benefit Plan;

(ix) sold, assigned, licensed or otherwise transferred or disposed of any Intellectual Property that would be an Acquired Asset;

(x) licensed, waived or relinquished any material right of Seller or the

Business to or for the benefit of any other Person;

(xi) written up or written down the value of any of the Acquired Assets, individually or in the aggregate, in an amount greater than \$5,000;

(xii) made or authorized to be made any amendment, modification or other change to the Organizational Documents; or

(xiii) agreed, resolved or committed to do any of the foregoing, or, to the Knowledge of Seller, omitted to take any action that could reasonably be expected to result in the occurrence of any of the foregoing.

#### **4.8 Taxes.**

(a) All Tax Returns required to be filed by Seller or with respect to the Business or the Acquired Assets have been filed and all such Tax Returns were correct and complete in all material respects as they relate to the Business or the Acquired Assets.

(b) All Taxes which are due and payable by Seller or its Members or with respect to the Business or the Acquired Assets, including any Taxes levied on any of Seller's properties, assets, income or franchises relating thereto, have been timely paid.

(c) All amounts required to be collected or withheld with respect to the Business or the Acquired Assets for the payment of Taxes have been collected or withheld, and have been, or will be, timely remitted to the taxing authority to whom such payment is due.

(d) No examination, claim, assessment, deficiency or other Legal Proceeding is pending or, to the Knowledge of Seller, threatened with regard to any Taxes or Tax Returns on any issues relating to the Business or Acquired Assets.

(e) True and complete copies of all Tax Returns that have been filed by Seller, and all Tax Returns relating solely to non-income Taxes with respect to the Business or the Acquired Assets which do not incorporate Taxes with respect to parties other than Seller or assets other than the Acquired Assets, have been delivered or made available to Buyer. All required non-income Tax Returns that relate to the Business or Acquired Assets were filed by Seller.

(f) Seller has not waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency with respect to the Business or the Acquired Assets.

(g) Except as set forth on **Schedule 4.8(g)**, no state, local or foreign taxing authority, in a location in which Tax Returns have not been filed, has asserted liability or jurisdiction with respect to the Business or the Acquired Assets.

(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

product or other asset or any services related to the Business from any other Person, sell any product or other asset to or perform any services related to the Business for any other Person, or transact business or deal in any other manner related to the Business with any other Person; or (D) develop, use, sell or license any Intellectual Property related to the Business;

(ix) each Contract concerning a partnership or joint venture or involving the sharing of profits or expenses related to the Business to which Seller is a party;

(x) each Contract pursuant to which Seller is committed to make a capital expenditure or to purchase a capital asset in excess of \$2,000 which is not contemplated by Seller's capital expenditure budget for the Business;

(xi) each Contract that is material to the condition (financial or otherwise) or operation of the Business, or which is outside the Ordinary Course of Business;

(xii) each Contract or other agreement under which Seller has agreed to indemnify any Person relating to the conduct of the Business;

(xiii) each Contract presently in effect, whether or not fully performed, by Seller with any current or former officer, manager, consultant, independent contractor or other employee (or group of employees) or equity holder (or group of equity holders) of Seller which relates to the Business; and

(xiv) each Contract that has or could reasonably be expected to have a Material Adverse Effect if (A) any other party cancelled or terminated such Contract (with or without notice or the passage of time), (B) any other party claimed monetary damages (either individually or in the aggregate with all other such claims under such Contracts) from Seller, or (C) any obligation were accelerated or any benefit were lost under such Contract.

(b) Each Acquired Contract that is a Material Contract may be transferred to Buyer pursuant to the terms of this Agreement, and each such Acquired Contract will be legally valid and binding and enforceable immediately following the Closing on terms identical to those in effect immediately prior to the Closing, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder and (except as set forth on **Schedule 4.16**) without the consent, approval or act of, or the making of any filing with, any other Person. Seller has performed, or is performing, all material obligations required to be performed by it to date under the Material Contracts, and it is not (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder. Seller has neither waived nor released any of its material rights under any Acquired Contract. Complete and correct copies of all Material Contracts, together with all material modifications, supplements and amendments thereto, have been made available to Buyer. Except as set forth on **Schedule 4.11(b)**, Seller is not a party to any Contract with (i) any Governmental Body or (ii) any third party relating to a Contract between such third party and any Governmental Body.

(c) All Material Contracts are valid, binding and in full force and effect and are enforceable against Seller and each other party thereto, in accordance with their terms, except as limited by (i) applicable bankruptcy, insolvency, fraudulent conveyance or other similar laws affecting creditors rights generally and (ii) general principles of equity, regardless of whether considered in a proceeding at law or equity. Except as set forth on **Schedule 4.11(c)**, no other party to any Material Contract is (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder or has repudiated any term of any Material Contract. Seller has not received any written notice of termination, cancellation or non-renewal with respect to any Acquired Contract, and to the Knowledge of Seller, no other party to an Acquired Contract plans to terminate, cancel or not renew any Acquired Contract.

#### **4.12 Employee Benefits Plans.**

Seller had no plan, program, policy or Contract related to the Business providing for compensation, bonuses, pension, retirement, profit sharing, health, dental, vision, life, disability, severance, termination pay, performance awards, equity or "profits interested" awards, fringe benefits or other employee benefits of any kind, if any, including any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is sponsored, maintained, or contributed to by any non-individual Seller or any Affiliate of any of them in which any current or former employee, officer, consultant, independent contractor, agent or manager of Seller participates (collectively, the "**Benefit Plans**").

#### **4.13 No Employees.**

(a) Except as otherwise provided in **Schedule 4.13(a)**, Seller neither has, nor has it ever had or engaged in the past, any employee that relates in any way to the Business or the Acquired Assets

(b) Except as otherwise provided in **Schedule 4.13(b)**, Seller has not engaged an independent contractor, other than legal counsel, in connection with the Business or the Acquired Assets.

#### **4.14 No Other Intellectual Property.**

Other than the Intellectual Property being transferred to Buyer, Seller has no, nor has it had in the past, any 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, relating to the Business or the Acquired Assets.

#### **4.15 No Government Contracts.**



Except as provided in Schedule 4.11(b), Seller is not now a party to, nor has it entered into, any contract or agreement with any Governmental Body.

**4.16 No Consents, Authorizations or Approvals.**

Except as provided in Schedule 4.16, no consents, authorizations or approvals of any third party are required to approve or authorize the transactions contemplated hereby.

**4.17 Litigation.**

Seller has not been a party to, nor been threatened with, any Legal Proceeding or Order; (b) Seller has not been threatened with any Legal Proceeding or Order, relating to the Business or the Acquired Assets; and (c) none of Seller's managers, officers, agents or employees (in their capacity as such) have been a party to or been threatened with any such Legal Proceeding or Order relating to Seller or the Business. There are no Legal Proceedings pending or, to the Knowledge of Seller, threatened against Seller or any Affiliate to enjoin or otherwise challenge the consummation of any of the transactions contemplated by this Agreement, the Seller Documents or the Buyer Documents.

**4.18 Compliance with Laws; Permits.**

(a) Seller is, and at all times since January 1, 2008, has been, in compliance in all material respects with all Laws applicable to the ownership or operation of the Business, the Acquired Assets and the Assumed Liabilities. Seller has received no notice of a violation of any Laws, nor to the Knowledge of Seller do any facts exist that might result in a failure to comply in all respects with all such applicable Laws, including in each case all Privacy Laws.

(b) There are no Permits which are required for the operation of the Business as presently conducted and (ii) the ownership and operation of the Acquired Assets is in compliance with all applicable Laws.

**4.19 Environmental Matters.**

With respect to the Business and the Acquired Assets, since January 1, 2008, (a) Seller is and has at all times been in compliance in all material respects with all applicable Environmental Laws; (b) Seller has not caused, arranged or allowed, or contracted with any party for, the transportation, treatment, storage or disposal of any Hazardous Materials and has not received any information request or notice from any Governmental Body that it is a potentially responsible party at any property under any Environmental Law; (c) there has been no release of Hazardous Materials into the environment on or from any real property owned by Seller which, with notice or the lapse of time or both, would be required under applicable Environmental Laws to be abated, remediated or reported to any Governmental Body by Seller; and (d) there are no past or present conditions, events, circumstances or facts that could reasonably be expected to form the basis of any claim or

Legal Proceeding against Seller based on or related to any release of a Hazardous Material or any violation of any Environmental Law.

#### **4.20 Financial Advisors.**

No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller or any of its Affiliates or any of them in connection with the transactions contemplated by this Agreement in a manner that would entitle any Person to any fee or commission or like payment in respect thereof.

#### **4.21 Insurance.**

Seller does not maintain any insurance policies, including but not limited to fire and casualty, liability and any other forms of insurance with respect to the Business and the Acquired Assets.

#### **4.22 Transactions with Affiliates.**

Except as set forth on Schedule 4.22, no Affiliate of Seller has any interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to the Business, the Acquired Assets or the Assumed Liabilities. Except as set forth on Schedule 4.22, neither Seller nor any Affiliate owns (of record or as a beneficial owner) an equity interest or any other financial or profit interest in, a Person that has (a) had business dealings or a material financial interest in any transactions with Seller with respect to the Business, or (b) engaged in competition with the Business with respect to any line of the products or services of the Business in any market presently served by the Business. Except as set forth in Schedule 4.22 and other than the Master Consulting Agreement, there is no Contract between Seller and any of Seller's Affiliates with respect to the Business that is currently in effect or that would continue in effect subsequent to the Closing. All of the Contracts set forth in Schedule 4.22 were entered into in the Ordinary Course of Business.

#### **4.23 Customers.**

Except as provided in Schedule 4.23, Seller has no customers.

#### **4.24 Product Warranty.**

Schedule 4.24 describes all express warranties or guaranties that have been extended with respect to the products or services provided by the Business. Each product and service sold, leased, licensed or delivered by the Business has been in conformity with any applicable contractual commitments and any express and implied warranties, and has been in conformity in all material respects with all statements or other information about the functionality or performance of such product or service that are made generally available to its customers in manuals or other documentation, on the Business' websites or in the Business' marketing or advertising materials, and Seller has no Liability (nor to the Knowledge of Seller is there any reasonable basis for any present or future demand, claim or

action of any kind giving rise to any Liability) for breach, nonperformance, replacement or repair thereof or other damages in connection therewith. No product or service sold, leased, licensed or delivered by Seller with respect to the Business is subject to any guaranty, express warranty or other indemnity other than as set forth on **Schedule 4.24**.

#### **4.25 Solvency.**

Neither Seller nor any of the Acquired Assets are the subject of any pending, rendered or, to the Knowledge of Seller, threatened insolvency proceedings of any character. Seller has not made an assignment for the benefit of creditors or taken any action with a view to or that would constitute a valid basis for the institution of any such insolvency proceedings. Seller is not insolvent, and Seller will not become insolvent as a result of entering into this Agreement or any of the Seller Documents or consummating the transactions contemplated hereunder and thereunder.

#### **4.26 No Shared Code.**

No code contained in the iCare Software is shared with any other software used by Seller.

#### **4.27 Intellectual Property Assignment.**

Seller hereby reiterates and confirms each of the representations and warranties that it is making in the Intellectual Property Assignment, including but not limited to the following representations and warranties (i) a Software License Agreement by and between UTRF and Seller, dated January 13, 2010, is of no further force and effect, except for Articles 3.1, 6.1, 12 and 13.2 thereof, (ii) Seller has not licensed any iCare Intellectual Property to anyone, nor has it entered into any contract or agreement to do so, (iii) no iCare Intellectual Property or Materials (as defined in the Intellectual Property Assignment) were developed by anyone other than by (x) Tami H. Wyatt, Mathew A. Bell, Chayawat Indranoi, and Xueping Li in the course of their employment by UT and/or with substantial use of UT funds or facilities, or (y) entities or individuals who entered into agreements that caused any iCare Intellectual Property or Materials (as defined in the Intellectual Property Assignment) developed, conceived or reduced to practice by them to be owned by Seller, all of whose identities have been disclosed on **Schedule 4.10(d)(ii)**, and (iv) the DVD Package (as defined in the Intellectual Property Assignment) contains all of the Materials (as defined in the Intellectual Property Assignment).

#### **4.28 Full Disclosure.**

No representation or warranty of Seller in this Agreement, and no statement made by Seller contained in any Schedule, contains any untrue or misleading statement of a material fact or omits or will omit to state any material fact, necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading.

## ARTICLE V- REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller, as of the date hereof, that the following statements are true and correct:

### 5.1 Organization and Good Standing.

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority and material Permits to own, operate, lease and otherwise hold its assets and to carry on its business as it is now being conducted and as it is currently intended to be conducted.

### 5.2 Authorization of Agreement.

Buyer has all corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer in connection with the consummation of the transactions contemplated hereby and thereby (the "**Buyer Documents**"), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each Buyer Document by Buyer, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been and as of the completion of the Closing each Buyer Document will have been duly and validly executed and delivered by Buyer, and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement and each Buyer Document constitutes, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

### 5.3 Conflicts; Consents of Third Parties.

(a) Neither the execution and delivery by Buyer of this Agreement or the Buyer Documents, the consummation of the transactions contemplated hereby or thereby, nor the compliance by Buyer with any of the provisions hereof or thereof will, directly or indirectly:

(i) contravene, conflict with or result in a violation of (A) the certificate of incorporation or by-laws of Buyer, or (B) any resolution adopted by the directors or stockholders of Buyer; or

(ii) to the knowledge of Buyer, contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge the transactions contemplated by this Agreement or the Buyer Documents under any Law

applicable to Buyer or any Order to which Buyer is subject.

(b) To the knowledge of Buyer, no consent, waiver, approval, Order, Permit, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Buyer in connection with the execution and delivery of this Agreement or the Buyer Documents or the compliance by Buyer with any of the provisions hereof or thereof, or the consummation of the transactions contemplated hereby and thereby.

#### **5.4 Litigation.**

As of the date of this Agreement, there are no Legal Proceedings pending or, to the knowledge of Buyer, threatened against Buyer to enjoin or otherwise challenge the consummation of any of the transactions contemplated by this Agreement, the Seller Documents or the Buyer Documents.

#### **5.5 Financial Advisors.**

No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement in a manner that would entitle any Person to any fee or commission or like payment in respect thereof from Seller.

#### **5.6 Sufficient Funds.**

Buyer has sufficient funds or access to sufficient funds to satisfy its obligations hereunder, including remittances at Closing.

#### **5.7 Full Disclosure.**

No representation or warranty of Buyer in this Agreement omits or will omit to state any material fact, necessary, in light of the circumstances under which it was made, in order to make the statements herein not misleading.

### **ARTICLE VI- COVENANTS**

#### **6.1 Further Assurances.**

(a) Subject to the terms and conditions of this Agreement, Buyer and Seller shall (i) use commercially reasonable efforts to consummate the transactions contemplated by this Agreement as promptly as reasonably practical, (ii) take all actions and do all things necessary, proper or advisable to cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement and (iii) cooperate with each other to ensure the orderly transition of the Acquired Assets and Assumed Liabilities from Seller to Buyer.

(b) In case at any time after the Closing Date any further action is reasonably necessary to carry out the purposes of this Agreement, each of the parties will

take such further action (including the execution and delivery of such further instruments and documents) as any other party may reasonably request, at the sole cost and expense of the requesting party (unless otherwise specified herein).

(c) Following the Closing Date, Seller shall promptly forward to Buyer any payments received by Seller on account of any Acquired Assets and endorse such payments as necessary.

## **6.2 Tax Matters.**

Except as otherwise provided in Section 9.1:

(a) Seller shall cause to be timely filed all Tax Returns required to be filed with respect to the Business or the Acquired Assets for any periods beginning before the Closing Date and shall pay or cause to be paid all Taxes due thereon.

(b) Buyer shall cause to be timely filed all Tax Returns required to be filed with respect to the Business or the Acquired Assets for any periods beginning on or after the Closing Date and shall pay or cause to be paid all Taxes due thereon.

(c) Seller and Buyer agree to use the standard procedure set forth in Revenue Procedure 2004-53, or any superseding guidance, with respect to employment tax reporting.

## **6.3 Non-Competition; Non-Solicitation.**

(a) Subject to Section 6.3(b), beginning on the Closing Date and continuing through the end of 2015, neither Seller nor any Affiliate nor any person or entity listed on Schedule 6.3(a) will (whether directly or indirectly, through an Affiliate or another Person, or in the name or on behalf of an Affiliate or another Person, whether acting as an officer, director, stockholder, owner, partner, member, trustee, beneficiary, employee, promoter, consultant, technical adviser, agent, lender, manager or otherwise or as the assign of any such Person):

(i) compete with Buyer or its Affiliates in, or otherwise engage in, any aspect of the Business at locations in the Geographic Area, or from outside of the Geographic Area into the Geographic Area; or

(ii) divert or attempt to divert, solicit or attempt to solicit, interfere with or attempt to interfere with, take away or attempt to take away, or accept work or activities in the Business from any Existing Customer or Prospective Customer within the Geographic Area, or from outside the Geographic Area into the Geographic Area.

In the event of a breach by Seller or any of its Affiliates of any covenant set forth in this Section 6.3, the term of such covenant will be extended for Seller and all of its Affiliates by the period of the duration of such breach.

(b) Buyer agrees and acknowledges that the terms of **Section 6.3(a)** do not and shall not prevent or impair faculty members or graduate students of UT from authoring and presenting for publication certain books, articles, papers, speeches and posters, subject only to the protocols that appear in **Schedule 6.3(b)**.

(c) Seller acknowledges that the periods of restriction, the geographical areas of restriction and the restraints imposed by the provisions of this **Section 6.3** are fair and reasonably required for the protection of Buyer and the Business. If a final Order declares that any term or provision of this **Section 6.3** is invalid or unenforceable, the parties hereto agree that the Governmental Body making the determination of invalidity or unenforceability will have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement will be enforceable against the parties as so modified.

(d) Seller agrees that any violation of the covenants contained in this **Section 6.3** will cause irreparable damage to Buyer; therefore, in addition to any other remedies Buyer may have under this Agreement or otherwise, Buyer will be entitled to an injunction from any court of competent jurisdiction restraining Seller and its Affiliates from committing or continuing any violation of this **Section 6.3**, without the requirement of posting any bond or other indemnity.

#### **6.4 Confidentiality.**

(a) Except as required by the Seller Documents, the Buyer Documents, the Acquired Contracts, the Assumed Liabilities, or as permitted in writing by Buyer or its designee, at all times from and after the Closing Date, Seller will, and will cause its Affiliates to, retain in the strictest confidence, not disclose or use for the benefit of themselves or others, and use commercially reasonable efforts to keep secret, any confidential or proprietary information in its possession on the date hereof concerning the Business, the Acquired Assets (including the Acquired Intellectual Property) or the Assumed Liabilities, including any know-how, trade secrets, customer lists, details of customer or consultant contracts, pricing policies, operational methods, marketing plans or strategies, product development techniques, plans or processes of the Business constituting a part thereof, that remains in or comes into its possession in any form after the Closing, (collectively, "**Confidential Information**"). Confidential Information shall not include any of the foregoing which are in or enter the public domain (except through the conduct of Seller or any of its Affiliates that violates this **Section 6.4(a)**). In the event Seller or any Affiliate is requested or required (by oral request or written request for information or documents in any Legal Proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Seller will notify Buyer promptly in writing of the request or requirement, and Buyer may seek an appropriate protective order or waive compliance with this **Section 6.4(a)**. If, in the absence of a protective order or receipt of a waiver hereunder, Seller or any Affiliate is, on the written advice of counsel, compelled by

records relating to Tax matters or any other action, either party shall have reasonable access to such information until the applicable statute of limitations, if any, shall have expired. Except as otherwise agreed in writing, each party shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the other pursuant to this **Section 6.5(a)**. Each party shall have the right to copy any of such records at its own expense. Neither party shall be required by this **Section 6.5(a)** to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations.

(b) After the expiration of such six (6) year period (or the applicable statute of limitations with respect to any Tax Returns or other records relating to Tax matters or any other action), Seller on the one hand, and Buyer on the other hand, will provide at least 60 days prior written notice to the other party of its intent to dispose of any such Books and Records relating to the Business, and such other party will be given the opportunity, at its cost and expense, to remove and retain all or any part of such books and records as it may select.

#### **6.6 Litigation Support.**

In the event and for so long as Seller on the one hand, or Buyer on the other hand, is actively contesting or defending after the Closing against any third party Legal Proceeding in connection with any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction involving the Business, the other party will reasonably cooperate with the contesting or defending party and its counsel in the contest or defense, make available its personnel at reasonable times and upon reasonable notice and provide such testimony and access to its books and records as may be reasonably requested in connection with the contest or defense, at the sole cost and expense of the contesting or defending party (unless such contesting or defending party is entitled to indemnification therefor under **Article VIII**, in which case the costs and expenses will be borne by the parties as set forth in **Article VIII**).

#### **6.7 Seller's Obligation to Cease Use of Names and Similar Terms.**

Beginning immediately following the Closing, Seller will, and will cause its Affiliates to, cease using any trademark, brand name, trade name, corporate name, domain name or other indication of source or origin, that includes, is based on, relates to or is likely to be confused with or is confusingly similar to the terms "iCare" or any other similar terms or derivatives thereof.

### **ARTICLE VII- CLOSING DELIVERIES**

#### **7.1 Closing Deliveries of Seller.**

Simultaneous with the execution of this Agreement, Seller will deliver to Buyer:



(a) duly executed counterpart of assignment to Buyer of Acquired Intellectual Property (the "**Intellectual Property Assignment**");

(b) duly executed counterpart of a master consulting services agreement (the "**Master Consulting Agreement**");

(c) any consents listed on **Schedule 4.16**;

(d) duly executed instruments of assignment to Buyer of intellectual property from Matthew Arthur Bell, Chayawat Indranoi, Xueping Li, Tami Hodges Wyatt;

(e) duly executed Basic Agreement by and between UT and UTRF dated November 23, 2010;

(f) duly executed Side Agreement by and between UTRF and iCare dated December 1, 2010;

(g) duly executed Assignment of Intellectual Property by and between UTRF and iCare dated December 1, 2010;

(h) duly executed Intellectual Property License by and between UTRF and iCare dated December 1, 2010 (the "**UTRF Intellectual Property License**");

(i) duly executed counterpart of an Intellectual Property License with WKH (the "**WKH Intellectual Property License**");

(j) certificate, signed by an officer of Seller, certifying the certificate of formation and operating agreement of Seller, resolutions of Seller's Board of Managers and the Members and the incumbency of Seller's officers.; and

(k) such other certificates, deeds, bills of sale, endorsements, assignments, affidavits and other good and sufficient instruments of sale, assignment, conveyance and transfer, as are reasonably requested by Buyer to effectively convey the Acquired Assets in accordance with this Agreement.

## **7.2 Closing Deliveries of Buyer.**

Simultaneous with the execution of this Agreement, Buyer will deliver to Seller:

(a) the amount set forth on **Schedule 2.3(a)** by bank wire transfer to an account specified in writing by Seller in accordance with **Section 2.3(a)**;

(b) duly executed counterpart of the Intellectual Property Assignment;

(c) duly executed counterpart of the Master Consulting Agreement; and

- (d) duly executed counterpart of the WKH Intellectual Property License.

## ARTICLE VIII - SURVIVAL; INDEMNIFICATION; LIMITED RECOURSE

### 8.1 Survival; Exclusive Remedy.

The representations and warranties contained in this Agreement shall survive the Closing and continue in full force and effect for as long as Buyer has any payment obligation under Section 2.3, except that the representations and warranties contained in (a) Sections 4.1 (Organization and Good Standing), 4.2 (Authorization of Agreement), 4.3 (Conflicts; Consents), 4.9 (Assets of the Business), 4.21 (Financial Advisors), 4.23 (Transactions with Affiliates), 5.1 (Organization and Good Standing), 5.2 (Authorization of Agreement), 5.3 (Conflicts; Consents) and 5.5 (Financial Advisors) shall survive the Closing and continue in full force and effect indefinitely; (b) Sections 4.8 (Taxes), 4.12 (Employee Benefit Plans) and 4.20 (Environmental) will survive the Closing and continue in full force and effect until the expiration of the statute of limitations (as may be extended by any Governmental Body) applicable to the subject matter of such representations or warranties, and (c) Section 4.10 (Intellectual Property) shall survive the Closing and continue in full force and effect for a period of five (5) years after the Closing Date. If written notice of a claim has been given prior to the expiration of the applicable period set forth above by any party hereto to the other party hereto in accordance with the notice requirements under Section 9.4 below, then the indemnification claim with respect to such representation, warranty or covenant shall survive as to such claim, until the claim has been finally resolved. Any knowledge or investigations by or on behalf of a party hereto shall not constitute a waiver of such party's right to enforce any of its rights pursuant to this Article VIII.

### 8.2 Obligation of Seller to Indemnify.

Subject to the terms and conditions of this Article VIII, Seller agrees to reimburse, defend, indemnify and hold harmless Buyer, its present and future Affiliates, and its and their present and future directors, officers, employees and representatives (individually, a "Buyer Indemnified Party," and collectively, the "Buyer Indemnified Parties") from, against, and in respect of any and all losses, fees, liabilities, damages, claims, deficiencies and all costs and expenses (including defense and settlement costs, interest, penalties and reasonable attorneys' and accountants' fees and disbursements) (each, a "Loss" and collectively, the "Losses"), that any Buyer Indemnified Party may suffer, sustain, incur or become subject to and that exist or arise due to any of the following:

(a) prior to their expiration in accordance with Section 8.1 hereof, any inaccuracy of any representation or breach of any warranty made or given by Seller in this Agreement or the Seller Documents (or any claim that if true, would constitute such an inaccuracy or breach);

(b) the breach by Seller of, or any non-fulfillment or failure to perform or comply with, any covenant or agreement on the part of Seller contained in this Agreement (or any claim that if true, would constitute such a non-fulfillment or failure);

(c) any Liability for Taxes with respect to the Business or the Acquired Assets or Assumed Liabilities arising prior to the Closing Date;

(d) any non-compliance by Seller with bulk sales or registration of bills of sale Laws, or other Laws for the protection of creditors, with respect to the transactions undertaken under this Agreement.;

(e) any fraud, intentional misrepresentation or criminal acts committed by or on behalf of Seller or any Affiliate on or prior to the Closing with respect to this Agreement, the Business, the Acquired Assets or the Acquired Intellectual Property; and

(f) the Excluded Assets or the Excluded Liabilities, except to the extent caused by the failure of a representation or warranty of Buyer under this Agreement to be true and correct.

### **8.3 Obligation of Buyer to Indemnify.**

Subject to the terms and conditions of this **Article VIII**, Buyer agrees to reimburse, defend, indemnify and hold harmless Seller, its present and future Affiliates, and its and their present and future directors, officers, employees and representatives (individually, a "**Seller Indemnified Party**," and collectively, the "**Seller Indemnified Parties**") from, against, and in respect of any and all Losses, that any Seller Indemnified Party may suffer, sustain, incur or become subject to and that exist or arise due to any of the following:

(a) prior to their expiration in accordance with **Section 8.1** hereof, any inaccuracy of any representation or breach of any warranty made or given by Buyer in this Agreement or the Buyer Documents (or any claim that if true, would constitute such an inaccuracy or breach);

(b) the breach by Buyer of, or any non-fulfillment or failure to perform or comply with, any covenant or agreement on the part of Buyer contained in this Agreement (or any claim that if true, would constitute such an inaccuracy or breach);

(c) liabilities for Taxes arising from the operation of the Business and the ownership of the Acquired Assets by Buyer on or after the Closing Date;

(d) the Assumed Liabilities, except to the extent caused by the failure of a representation or warranty of Seller under this Agreement to be true and correct; and

(e) any fraud, intentional misrepresentation or criminal acts committed by or on behalf of Buyer or any Affiliate on or prior to the Closing with respect to this Agreement, the Business, the Acquired Assets or the Acquired Intellectual Property.

### **8.4 Notice and Opportunity to Defend.**

extent that it wishes, to assume and control the defense of such Third Party Claim through counsel of its choice if it gives notice of its intention to assume and control the defense to the Indemnified Party within 30 days of the receipt of the notice of a Third Party Claim from the Indemnified Party; provided, however, that the Indemnified Party may participate in such defense and after notice of the Indemnifying Party's election to assume the defense thereof, the Indemnifying Party will not be liable to the Indemnified Party for any further legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense of the Third Party Claim, other than reasonable out-of-pocket costs of investigation, unless the Indemnifying Party does not actually assume the defense thereof following notice of such election. Notwithstanding the foregoing, if (i) there exists or is reasonably likely to exist a good-faith conflict of interest that would make it inappropriate for the same counsel to represent both the Indemnified Party and the Indemnifying Party, (ii) the Indemnified Party elects to pursue one or more defenses or counterclaims available to it that are inconsistent with one or more of those that are being pursued by the Indemnifying Party in respect of such Third Party Claim or any litigation relating thereto, (iii) the Third Party claim seeks injunctive or other nonmonetary relief against the Indemnified Party, (iv) the Indemnifying Party does not promptly assume the defense thereof following notice of such election or (v) the Indemnified Party shall have reasonably concluded that its business interests warrant such action, then the Indemnified Party may participate in the defense of such Third Party Claim and shall be entitled to retain its own counsel in each jurisdiction for which the Indemnified Party reasonably determines counsel is required, at the expense of such Indemnifying Party in the case of (i) through (iv) above. In the event an Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to such Indemnifying Party, at such Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by such Indemnifying Party. Similarly, in the event the Indemnified Party is, directly or indirectly, conducting the defense against any Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party. The party controlling the defense of a Third Party Claim will consider in good faith any recommendation made by the other party with respect to the defense of such Third Party Claim. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party settle, compromise or offer to settle or compromise any such Third Party Claim on a basis which might give rise to liability (other than monetary liability paid in full by the Indemnifying Party) or limit in any manner any right, activity or conduct of the Indemnified Party or any subsidiary or Affiliate thereof, or does not include an unconditional release of the Indemnified Party for any liability arising out of such claim or demand.

(d) If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third Party Claim, the Indemnifying Party shall be bound by the results obtained in good faith by the Indemnified Party with respect to such claim.

## 8.5 Limitations on Liability.

(a) Notwithstanding any other provision of this Agreement to the contrary, the liability of an Indemnifying Party under every provision of this Agreement shall be limited in the manner set out in this Section 8.5. If there is any inconsistency between the provisions of this Section 8.5 and any other provision of this Agreement, then the provisions of this Section 8.5 shall prevail.

### (b) Claim Value and Liability Limits.

(i) The obligations of Seller as an Indemnifying Party pursuant to Section 8.2(a) hereof (A) will not apply to any Losses of the Buyer Indemnified Parties unless and until the total aggregate of such Losses exceeds \$25,000 (the "Threshold Amount"), provided that if such Threshold Amount is met, then, in addition to Buyer's right of offset set forth in Section 8.5(c) below, Seller will be liable for the Losses up to and no more than \$100,000 (the "Indemnity Cap"). Except as set forth in Section 8.5(c) below, the maximum aggregate liability of Seller with respect to this Agreement and the transactions relating to and/or undertaken in connection with this Agreement shall not exceed the Indemnity Cap, except for claims arising under, and only to the extent based on, Sections 4.10, 6.3, 6.4, 8.2(e) or 8.2(f), hereof.

(ii) The obligations of Buyer as an Indemnifying Party pursuant to Section 8.3(a) hereof (A) will not apply to any Losses of the Seller Indemnified Parties unless and until the total aggregate of such Losses exceeds the Threshold Amount, provided that if such Threshold Amount is met, then Buyer will be liable for all Losses and not just the portion that exceeds such Threshold Amount, and (B) will be limited to, and will not exceed the Indemnity Cap, except for Losses related to the nonpayment of amounts due under Section 2.3 and except for claims arising under and only to the extent based on Section 8.3(e), 6.4, 8.3(c) and 8.3(d) hereof, which shall not be limited.

(c) **Buyer's Right of Offset.** To the extent that Buyer has a good-faith claim against Seller under Section 8.2, in addition to any remedies that Buyer may have, Buyer shall have the right to offset such claim against any amount owed to Seller under Section 2.3 of the Agreement. For purposes of clarification, Buyer's right of offset set forth in this Section 8.5(c) shall not be limited to the Indemnity Cap.

## 8.6 Recourse Only to Seller.

Buyer agrees that (i) this Agreement is solely between Buyer and Seller, (ii) Seller shall be solely responsible for all of its liabilities, obligations, agreements and undertakings under this Agreement with respect to the iCare Software, and (iii) no party other than Seller shall have any liability to Buyer whatsoever under this Agreement with respect to the iCare Software.

## ARTICLE IX - MISCELLANEOUS

### 9.1 Payment of Sales, Use or Similar Taxes.

(a) Except as provided in the next sentence, and notwithstanding any other provision contained in this Agreement, Seller will pay all taxes imposed on Seller with respect to the Business, the Acquired Assets and the Acquired Liabilities prior to the Closing Date, and will hold Buyer harmless from all such taxes. All sales, use, transfer, intangible, recordation, documentary stamp or similar Taxes or charges, of any nature whatsoever, applicable to, or resulting directly from, the transactions contemplated by this Agreement, including any interest or penalties in respect thereof, shall be borne by Seller. For avoidance of doubt, responsibility for the entire amount of any income tax (and related penalties and interest) applicable to or resulting from the transaction contemplated by this Agreement shall not be affected by this provision.

(b) The parties hereto shall cooperate with each other concerning the filing of any necessary Tax Returns or other forms relating to transfer Taxes, and use commercially reasonable efforts, consistent with the form of the transaction, to minimize the transfer Taxes attributable to the transfer.

### 9.2 Audit Rights.

(a) On at least thirty (30) days notice to WKH, no more frequently than once each Royalty Year, and not later than ninety (90) after receipt of the April 1 payment in respect of a Royalty Year, iCare shall be entitled to retain an independent accounting firm acceptable to WKH in its sole discretion to audit the books and records of WKH pertaining to the payment(s) made pursuant to Section 2.3(c), (d), (e), (f) or (g), as applicable, for the sole purpose of confirming the accuracy of such payment(s). Any such audit shall be performed during normal business hours and subject to the independent accounting firm's execution of WKH's standard confidentiality agreement; however, the independent accounting firm shall not be prohibited from reporting the results of the audit to iCare.

(b) In the event that the audit discloses an overpayment, (i) iCare shall promptly remit to WKH the amount of the overpayment and (ii) iCare shall be responsible for the payment of all audit expenses.

(c) In the event that the audit discloses an underpayment, (i) WKH shall promptly remit to iCare the amount of the underpayment and (ii) iCare shall be responsible for the payment of all audit expenses unless the audit review discloses an underpayment equal to more than 5% of the amount previously paid by WKH pursuant to Section 2.3(c), (d), (e), (f) or (g), as applicable, in which case WKH shall reimburse iCare for the payment of all audit expenses. Notwithstanding the foregoing, WKH shall never reimburse iCare for the payment of audit expenses in excess of the amount of the underpayment.

(d) If the Parties dispute the results of the audit, the remitting Party shall place the disputed amount in escrow until the Parties reach a resolution.

### **9.3 Expenses.**

Except as set forth in Sections 9.1 and 9.2 above, Seller on the one hand, and Buyer on the other hand shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

### **9.4 Entire Agreement; Amendments and Waivers.**

This Agreement (including the Schedules, the Seller Documents, the Buyer Documents and all other documents and certificates delivered pursuant to Article VII of this Agreement, all of which are expressly incorporated by reference herein) represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior negotiations, agreements and understanding, whether written or oral, of the parties related to the subject matter hereof and thereof. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein, unless the party allegedly waiving its rights agrees in writing to such waiver. This Agreement can be amended, supplemented or changed, only by written agreement signed by all parties hereto. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

### **9.5 Notices.**

All notices and other communications under this Agreement shall be in writing and delivered personally, sent by reputable, overnight courier service (charges paid by sender), sent by registered or certified mail, postage prepaid, or by facsimile, at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision). Such notices and other communications shall be deemed given: at the time delivered by hand, if personally delivered; one business day after being sent, if sent by reputable, overnight courier service; at the time received for (or refused) on the return receipt, if sent by registered or certified mail; and at the time when confirmation of successful transmission is received by the sending facsimile machine, if sent by facsimile.

If to Seller, to:

iCare Academic, LLC  
2450 EJ Chapman Drive  
Knoxville, TN 37996

Facsimile: 865-974-4607  
Attn: Tami Wyatt

With a copy to:

Business Law Clinic  
The University of Tennessee College of Law  
Clinical Programs  
Suite 79  
1505 W. Cumberland Ave.  
Knoxville, Tennessee 37996-1810  
Fax: 865-974-6782  
Attn: Business Clinic Director

If to Buyer, to:

Wolters Kluwer Health, Inc.  
c/o Wolters Kluwer United States Inc.  
2700 Lake Cook Road  
Riverwoods, IL 60015-3867  
Facsimile: (847) 890-6084  
Attn: Susan Driscoll

With a copy to:

Goldberg Kohn Ltd.  
55 East Monroe Street  
Suite 3300  
Chicago, IL 60603  
Facsimile: (312) 863-3971  
Attn: Gerald L. Jenkins and Brooke A. Levy

#### **9.6 Severability.**

If any term or other provision of this Agreement is held to be invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall 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 shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are fulfilled and consummated as originally contemplated to the greatest extent possible.

#### **9.7 Binding Effect; Assignment; Third Party Beneficiaries.**



This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person not a party to this Agreement except as contemplated by Article VIII and Section 2.3(i). No assignment of this Agreement or of any rights or obligations hereunder may be made by any party, directly or indirectly (by operation of Law or otherwise), without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void; provided, however, Buyer may assign all of its rights, obligations and interests hereunder to one or more of its Affiliates or wholly-owned Subsidiaries, or to a third party.

#### **9.8 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

#### **9.9 Waiver of Jury Trial.**

Each party hereto hereby waives to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any Legal Proceeding directly or indirectly arising out of, under or in connection with this Agreement, any Seller Documents, any Buyer Documents or any transaction contemplated hereby or thereby. Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (b) acknowledges that it and the other party hereto have been induced to enter into this Agreement, the Seller Documents and the Buyer Documents, as applicable, by, among other things, the mutual waivers and certifications in this Section 9.9.

#### **9.10 Governing Law.**

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Illinois applicable to contracts made and performed entirely in Illinois, without references to the conflicts of law rules of such State. Any and all claims based on this Agreement shall be subject to the exclusive jurisdiction of the state or federal courts located in Chicago, Illinois.

#### **9.11 Specific Performance.**

Each of the parties acknowledges and agrees that the other party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached after the Closing. Accordingly, each of the parties agrees that the other party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted after the Closing and in any court of the United States or in any state thereof having jurisdiction

over the parties and the matter, in addition to any other remedy to which they may be entitled, at Law or in equity, without posting any bond.

#### **9.12 Informal Dispute Resolution.**

If a dispute arises between the parties regarding the subject matter of this Agreement, either party may request that the other party participate in an informal dispute resolution process by notifying such other party of its desire to initiate the process in writing. The written notice shall contain at a minimum a brief description of the item(s) being disputed, the notifying party's position relating to such item(s), any relevant citations to this Agreement and any relevant statutes, regulations, judicial decisions or any other authoritative sources, and the name and contact information of the notifying party's principal negotiator. The initial principal negotiator for Buyer shall be Frank Mortimer, and the initial principal negotiator for Seller shall be Tami Wyatt. Within ten (10) business days of receipt of such a notice, the receiving party shall respond to the notifying party in writing. The response notice shall contain at a minimum the receiving party's position relating to such item(s), any relevant citations to this Agreement and any relevant statutes, regulations, judicial decisions or any other authoritative sources, and the name and contact information of the receiving party's principal negotiator. Within five (5) business days of the notifying party's receipt of the receiving party's response notice, the two negotiators shall discuss the item(s), and each party, through its negotiator, will attempt to resolve the item(s) subject to dispute in good faith until the earlier of: (i) all item(s) described in the dispute notice have been resolved, (ii) the parties mutually agree in writing that they have reached an impasse on one or more of the item(s), and (iii) thirty (30) days from the notifying party's receipt of the response notice have elapsed.

**\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK \*\***

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

**ICARE ACADEMIC, LIMITED LIABILITY  
COMPANY**

By: Tami H. Wyatt  
Tami H. Wyatt, its President

**WOLTERS KLUWER HEALTH, INC.**

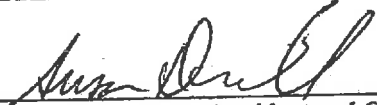
By: \_\_\_\_\_  
Susan Driscoll, its President and CEO of P&E, a  
business unit of Wolters Kluwer Health, Inc.

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

**ICARE ACADEMIC, LIMITED LIABILITY  
COMPANY**

By: \_\_\_\_\_  
Tami H. Wyatt, its President

**WOLTERS KLUWER HEALTH, INC.**

By:  \_\_\_\_\_  
Susan Driscoll, its President and CEO of P&E, a  
business unit of Wolters Kluwer Health, Inc.