

# ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the Effective Date) by and between \_\_\_\_\_, having its offices at \_\_\_\_\_ (the Buyer) and \_\_\_\_\_, having its offices at \_\_\_\_\_ (the Seller)

## RECITALS

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller certain Purchased Assets currently used in the business known as \_\_\_\_\_ with a principal operating address of \_\_\_\_\_ (the Business)

NOW, THEREFORE, the parties agree as follows:

### 1. TRANSFER OF ASSETS

Subject to the terms and conditions contained in this Agreement, Seller agrees to sell, transfer, assign, convey and deliver the following Purchased Assets to Buyer:

- (a) Tangible property - furniture, chairs, desks, copiers, telephone systems, computer networks and hardware, conference tables, work stations, fixtures, machinery, equipment and tools;
- (b) Intangible property - right, title and interest of Seller, if any, under leases of personal property and equipment;
- (c) Intellectual property - trademarks, trade names, and service marks, service names copyrights, trade secrets telephone numbers and telephone listings, client listings, computer programming code, all documentation, user manuals and instructions used in the operation of the Business;
- (d) Contractual Obligations - Contracts and agreements related to Business for which Seller is a party;
- (e) Accounts receivable, books and records;
- (f) Licenses & Approvals - All permits, licenses, certificates and governmental authorizations, approvals, license applications or related certifications obtained in connection with the operation of the Business;
- (g) All data processing programs, software programs, computer printouts, data bases and hardware and related items used in the Web Development Business, including accounting, invoices, auditing, and data processing bases and programs, including but not limited to the software programs;

(collectively, the Purchased Assets)

### 2. EXCLUSIONS

- (a) The following assets are excluded from the Purchased Assets:
  - (i) Cash;

(ii) Deposits

(iii) \_\_\_\_\_

(b) Except for the Assumed Liabilities defined hereunder, Buyer shall not assume, nor shall be liable or responsible for, any other liabilities, obligations or debts of Seller arising before or after the Closing.

### 3. PURCHASE PRICE

The total purchase price for the Purchased Assets shall be \$\_\_\_\_\_ (the "Purchase Price").

### 4. ASSUMPTION OF LIABILITIES

On the date of Closing, Buyer shall assume and agree to discharge or perform only the following liabilities and obligations:

(a) All obligations under customer purchase orders and statement of works;

(b) All liabilities under the leases of personal property and equipment, and contracts or agreements with vendors providing services after the Closing Date;

(c) \_\_\_\_\_.

(collectively, the "Assumed Liabilities")

### 5. REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller hereby represents and warrants to Buyer as follows:

(a) The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and having authority to own, lease and operate its properties and assets and to carry on its business.

(b) The Seller has full authority to enter into this Agreement and to carry out the transactions made herein. The Seller has taken all action required by law, and by the Seller's Articles of Incorporation and By-Laws and shareholders' agreement, if any, to authorize this sale.

(c) The Seller is the sole and lawful owner of the Purchased Assets.

(d) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not (i) result in any material liability to the Seller; (ii) constitute a violation of or a default under, any existing term or provision of the Articles of Incorporation or By-Laws or any shareholders' agreement, of the Seller or any license, permit, order, writ, injunction or decree of any court, governmental agency or arbitration tribunal, or any contract, commitment, indenture, lease, sale.

(e) There is no litigation, arbitration, governmental claim, investigation or proceeding pending or threatened against the Seller affecting the Purchased Assets at law or in equity, before any court, arbitration tribunal, licensing authority or governmental agency.

(f) There are no outstanding or threatened orders, writs, injunctions or deliverers of any court, governmental agency or arbitration tribunal against or affecting the Purchased Assets of the Web Development Business.

(g) All federal, state and local permits, certificates, licenses, approvals and other authorizations held by the Seller which are

necessary or useful in the conduct and operation of the Web Development Business are in full force and effect. The Seller is not in violation of the same.

## 6. REPRESENTATIONS AND WARRANTIES BY BUYER

Buyer hereby represents and warrants as follows:

- (a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and has full authority to own and operate its properties and assets and to carry on its business.
- (b) Buyer has full corporate power and authority to enter into this Agreement and to carry out the transactions made herein. Buyer has taken all action required by law and by Buyer's Articles of Incorporation and By-Laws to authorize the execution and delivery of this purchase.
- (c) To the best of Buyer's knowledge, there is no litigation, arbitration, proceeding, either pending or threatened, or outstanding orders, writs, injunctions or decrees of any court, governmental agency or tribunal which prevents Buyer from consummating the transactions made herein.

## 7. CLOSING

The Closing of the purchase and sale of the Purchased Assets (the "Closing") shall be held at \_\_\_\_\_ p.m. on \_\_\_\_\_, at such place as Buyer and Seller may agree. Upon such Closing, Seller shall be deemed to have fully and completely transferred to Buyer all his rights, title and interest, in the Purchased Assets. Seller shall not be liable or responsible for any liabilities or obligations of any kind or nature whatsoever arising out of, under, or related to the Purchased Assets from and after the Closing.

## 8. DISCLAIMER

Buyer agrees that the Purchased Assets is sold in their AS IS, WHERE IS condition. Buyer acknowledges that it has previously been given the opportunity to and has conducted such investigations and inspections of the Purchased Assets and is satisfied with the present condition of the Purchased Assets. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SELLER DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, WARRANTIES, OR CONDITIONS OF ANY KIND OR NATURE WHATSOEVER CONCERNING THE PURCHASED ASSETS, INCLUDING (WITHOUT LIMITING THE GENERALITY OF THE FOREGOING) ANY WARRANTIES REGARDING THE OWNERSHIP, CONDITION, QUANTITY AND/OR QUALITY OF ANY OR ALL OF THE PURCHASED ASSETS AND ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.

## 9. INDEMNIFICATION BY THE SELLER

In the event Seller breaches or is deemed to have breached any of the representations and warranties contained in this Agreement, or fails to perform or comply with any of the covenants and obligations set forth in this Agreement, Seller shall hold harmless, indemnify and defend Buyer, and each of its directors, officers, shareholders, attorneys, representatives and agents, from and against any damages incurred or paid by Buyer to the extent such damages arise or result from a breach by Seller of any such representations or warranties or a violation of any covenant in this Agreement.

## 10. INDEMNIFICATION BY BUYER

In the event Buyer breaches or is deemed to have breached any of the representations and warranties contained this Agreement or fails to perform or comply with any of the covenants and obligations set forth in this Agreement, then Buyer shall hold harmless, indemnify and defend Seller from and against any damages incurred or paid by the Seller to the extent such damages

arise or result from a breach by Buyer of any such representations and warranties or a violation of any covenant in this Agreement.

#### 11. NOTICES

All notices, demands, and requests which may be given or which are required to be given by either party to the other, hereunder shall be in writing. Such notices shall be deemed delivered when personally delivered to the address of the party to receive such notice set forth below or, whether actually received or not, five (5) days after having been deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows:

If to Buyer:

\_\_\_\_\_

\_\_\_\_\_

If to Seller:

\_\_\_\_\_

\_\_\_\_\_

#### 12. AMENDMENT AND MODIFICATION

This Agreement may be amended, modified or supplemented only by written agreement of Buyer and Seller.

#### 13. SEVERABILITY

If any provision of this Agreement shall be held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect.

#### 14. ENTIRE AGREEMENT

This Agreement sets forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written.

#### 15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

#### 16. ARBITRATION

All disputes under this Agreement shall be settled by arbitration in \_\_\_\_\_ before a single arbitrator pursuant to the commercial law rules of the American Arbitration Association. Arbitration may be commenced at any time by any party hereto giving written notice to the other party to a dispute that such dispute has been referred to arbitration. Any award rendered by the arbitrator shall be conclusive and binding upon the parties hereto.

This provision for arbitration shall be specifically enforceable by the parties and the decision of the arbitrator in accordance

herewith shall be final and binding without right of appeal.

#### 17. COUNTERPARTS

This Agreement may be executed in one or more counterparts all of which when taken together constitute one and the same instruments. A signed counterpart is as binding as an original.

#### 18. HEADINGS

The headings used in this Agreement are for convenience only and shall not be used to limit or construe the contents of any of the sections of this Agreement.

#### 19. SURVIVAL

All covenants, warranties and representations herein shall survive this Agreement and the Closing Date

#### 20. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Buyer may, without need for any consent or notice to Seller, assign all of its rights and obligations under this Agreement to any Affiliate of Buyer, and such assignment shall release Buyer of all of its liabilities and obligations to Seller, provided such liabilities and obligations are fully assumed by Buyer's assignee.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

SELLER

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BUYER

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