

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

**ALOFT MEDIA, LLC,**

**Plaintiff,**

**v.**

**YAHOO!, INC., et al.,**

**Defendants.**

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**Civil Action No. 6:08-cv-509**

**JURY TRIAL DEMANDED**

EXHIBIT "7"

## SALE AND PURCHASE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT (hereinafter called the "Agreement") is entered into by and between **KEVIN J. ZILKA** ("Seller"), and **CHRISTOPHER M. EDGEWORTH** ("Purchaser").

### WITNESSETH:

- A. Kevin J. Zilka, as the "Member," formed Aloft Media, LLC, a Texas limited liability company, pursuant to: (i) that certain Company Agreement made and entered into effective July 18, 2007 (the "Company Agreement"); and (ii) that certain Certificate of Formation made and entered into and filed of record with the Office of the Secretary of State of Texas effective July 12, 2007, as amended by that certain Certificate of Amendment made and entered into and filed of record with the Office of the Secretary of State of Texas dated effective June 4, 2008; and
- B. Seller has agreed to transfer and sell and Purchaser has agreed to purchase a two percent (2.00%) membership interest ("Purchased Interests"); and
- C. Seller and Purchaser desire to set forth the terms and conditions of such sale and purchase.

NOW, THEREFORE, for and in consideration of the foregoing and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### ARTICLE ONE

#### PURCHASE AND TRANSFER OF INTERESTS

**1.1 Agreement to Purchase and Transfer Interests.** Upon the terms and subject to all of the conditions contained herein, and performance by each of the parties of their respective obligations hereunder, Purchaser agrees to purchase and receive from Seller, and Seller agrees to assign, transfer and deliver to the Purchaser all of the Purchased Interests.

**1.2 Purchase Price.** The purchase price ("Purchase Price") for the sale and purchase of Seller's Interests shall be TWENTY AND NO/100 DOLLARS (\$20.00), payable in cash at Closing.

### ARTICLE TWO

#### OBLIGATIONS OF SELLER AND COMPANY

**2.1 Closing.** The closing ("Closing") of the purchase of the Purchased Interests shall occur effective February 1, 2009 ("Closing Date"). The Closing shall take place at 100 Congress Avenue, Suite 1300 in Austin, Texas or such other place, date and time as the parties shall mutually agree.

## **2.2 Seller's Obligations at Closing.**

A. Conveyance of Seller's Interests. At the Closing, Seller will assign, transfer and deliver to the Purchaser a Bill of Sale and Assignment of Membership Interests in form attached hereto as Exhibit "A" and made a part hereof and to execute such other instruments and documents as reasonably requested by the Purchaser to effectuate the complete transfer of the Purchased Interests to the Purchaser, whether prior or subsequent to the Closing Date.

B. Possession. Seller shall tender to the Purchaser possession of (i) the executed Assignment and Transfer of Membership Interests, (ii) any and all original documents relating to the Purchased Interests, and (iii) any and all tangible and intangible property of the Purchaser then possessed by or under the control of Seller.

C. Other Instruments. Seller shall execute and deliver such other agreements, instruments or other documents which may be necessary to facilitate the purchase of the Purchased Interests by the Purchaser or to evidence the agreements of Seller set forth herein.

## **2.3 Purchaser's Obligations at Closing.**

A. Delivery of Purchase Price. At Closing, the Purchaser pay to Seller the purchase price set forth in Section 1.2 of this Agreement.

B. Other Actions. The Purchaser hereby agrees that it shall take any reasonable action requested by Seller, either before or after the Closing Date, to evidence the agreements of the Purchaser set forth herein.

## **ARTICLE THREE**

### **REPRESENTATIONS AND WARRANTIES**

**3.1 Representations and Warranties of Seller.** As a material inducement to the Purchaser to execute and perform its obligations under this Agreement, Seller represents and warrants to the Purchaser on the date hereof that:

A. Seller is the legal and equitable owner and holder of the two percent (2.0%) membership interest.

B. The Purchased Interests are free and clear of all security interests, liens, encumbrances, restrictions, or claims.

C. Seller has the full right, power and authority to sell, transfer and deliver the Purchased Interests to Purchaser.

D. Seller has the full right, power and authority to enter into this Agreement and to carry out Seller's obligations hereunder without the joinder of any other person; and

E. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO

TO THE CONTRARY, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE VALUE OF THE PURCHASED INTERESTS OR ANY FACTUAL MATTERS REGARDING THE ASSETS, LIABILITIES OR FINANCIAL CONDITION OF THE COMPANY.

**3.2 Survival of Representations and Warranties.** The representations, warranties and covenants contained in this Agreement and any instrument delivered at Closing shall survive the Closing and Closing Date hereof for the term of the Note and shall not be merged in the documents delivered at Closing.

## ARTICLE FOUR

### DEFAULTS AND REMEDIES

#### **4.1 The Purchaser's Default and Seller's Remedies.**

A. Purchaser's Default. Purchaser shall be deemed to be in default under this Agreement if Purchaser fails to meet, comply with, or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement.

B. Seller's Remedies. If the Purchaser is deemed to be in default under this Agreement, Seller may, as Seller's sole and exclusive remedies: (i) terminate this Agreement, or (ii) enforce specific performance under this Agreement.

#### **4.2 Seller's Default and the Purchaser's Remedy.**

A. Seller's Default. Seller shall be deemed to be in default under this Agreement on the occurrence of any one or more of the following events:

1. Any of Seller's warranties or representations set forth in this Agreement is or becomes untrue at any time on or before Closing; or

2. Seller fails to meet, comply with or perform any covenant, agreement or obligation within the time limits and in the manner required in this Agreement.

B. The Purchaser's Remedies. If Seller is deemed to be in default under this Agreement, the Purchaser may, as Purchaser's sole and exclusive remedies: (i) terminate this Agreement by written notice delivered to Seller; or (ii) enforce specific performance of this Agreement.

## ARTICLE FIVE

### MISCELLANEOUS

**5.1 Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given when delivered personally, left in a conspicuous place at the designated address or three (3) days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows:

If to the Purchaser: Christopher M. Edgeworth  
211 W. Tyler, Suite C  
Longview, Texas 75601

If to either Seller: Kevin J. Zilka  
211 W. Tyler, Suite C  
Longview, Texas 75601

or such other address for either of the parties hereto as may from time to time be designated by notice given by such party to the other party in the manner hereinabove provided.

**5.2 GOVERNING LAW.** THIS AGREEMENT IS BEING EXECUTED AND DELIVERED, AND INTENDED TO BE PERFORMED IN GREGG COUNTY, TEXAS, AND THE LAWS OF THE STATE OF TEXAS SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED HEREIN.

**5.3 Entirety, Amendments And Survival.** This Agreement constitutes the entire Agreement between the parties hereto with regard to the subject matter hereof, and supersede all prior agreements and understandings, if any, relating to the subject matter hereof, including, but not limited to, any and all such agreements between all or any of the Purchaser and Seller, related to the subject matter hereof, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. The representations, warranties, covenants, indemnities and agreements of the parties, as well as any rights and benefits of the parties set forth in this Agreement shall survive Closing and shall not be merged therein.

**5.4 Number and Gender.** All of the terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter), as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if the words had been fully and properly written in the number and gender.

**5.5 Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only, and the same shall in no way enlarge or limit the scope or meaning of the provisions of this Agreement.

**5.6 Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or its severance from this agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision that is as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

5.7 **Time of Essence.** Time is of the essence of this Agreement.

5.8 **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of Seller, the Purchaser and their respective heirs, personal representatives, successors and permitted assigns.

5.9 **Further Acts.** In addition to the acts required in this Agreement to be performed by Seller and the Purchaser, Seller and the Purchaser agree to perform or cause to be performed at the Closing or thereafter any and all such other acts as may be reasonably necessary to consummate the transaction contemplated hereby.

5.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument.


5.11 **Exhibits.** All exhibits referred to herein or attached hereto are incorporated herein and shall be deemed to be an integral part of this Agreement as if set forth verbatim herein.

5.12 **Arbitration.** Notwithstanding any provision of this Agreement to the contrary, any dispute or disagreement between or among any of the parties to this Agreement arising from this Agreement shall be resolved pursuant to the terms of that certain Arbitration Agreement dated effective February 1, 2009, signed by the parties and others.

*[Signature Page Follows]*

EXECUTED to be effective February 1, 2009 ("Effective Date").

**SELLER:**

  
\_\_\_\_\_  
KEVIN J. ZILKA

**PURCHASER:**

  
\_\_\_\_\_  
CHRISTOPHER M. EDGEWORTH

**EXHIBIT "A"**  
**BILL OF SALE AND ASSIGNMENT OF MEMBERSHIP INTERESTS**

[See Attached Bill of Sale and Assignment of Membership Interests]

352369-2 02/18/2009



**ALOFT MEDIA, LLC**

**BILL OF SALE AND ASSIGNMENT OF MEMBERSHIP INTERESTS**

This Bill of Sale and Assignment of Membership Interests ("Assignment") is made by and between **KEVIN J. ZILKA**, a California resident ("Seller"), and **CHRISTOPHER M. EDGEWORTH**, a Texas resident ("Purchaser").

**RECITALS:**

A. Kevin J. Zilka, as the "Member," formed Aloft Media, LLC, a Texas limited liability company, pursuant to: (i) that certain Company Agreement made and entered into effective July 18, 2007 (the "Company Agreement"), and (ii) that certain Certificate of Formation made and entered into and filed of record with the Office of the Secretary of State of Texas effective July 12, 2007, as amended by that certain Certificate of Amendment made and entered into and filed of record with the Office of the Secretary of State of Texas dated effective June 4, 2008.

B. Purchaser desires to purchase a two percent (2.00%) membership interest from the Seller (the "Purchased Membership Interests").


NOW, THEREFORE, in consideration of the foregoing Recitals, and for \$20.00 cash in hand paid by Purchaser and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller has SOLD, ASSIGNED, TRANSFERRED, CONVEYED, and DELIVERED, and by these presents does hereby SELL, ASSIGN, TRANSFER, CONVEY, and DELIVER unto Purchaser all of the Purchased Membership Interests, free and clear of any liens, security interests, claims or encumbrances.

TO HAVE AND TO HOLD the Purchased Membership Interests, together with all and singular the rights and appurtenances thereto and in any wise belonging unto Purchaser, Purchaser's heirs, successors and assigns forever, and Seller does hereby bind Seller, his heirs, successors, and assigns to warrant and forever defend all and singular the Purchased Membership Interests unto Purchaser, Purchaser's successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by through or under Seller, but not otherwise.

*[signature page follows]*

IN WITNESS WHEREOF, this Assignment has been executed to be effective February 1, 2009.

**SELLER:**



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KEVIN J. ZILKA


**PURCHASER:**



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CHRISTOPHER M. EDGEWORTH

The undersigned member of the Company, for good and valuable consideration received, do hereby approve the foregoing purchase and assignment and do hereby waive any right of first refusal or option to purchase as to the transfer hereinabove made.



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KEVIN J. ZILKA

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**CONFIDENTIAL**

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