

01-12-1999

COVER SHEET  
ONLY

1-8-99  
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100938852

To the Honorable Commissioner

the attached original documents or copy thereof.

1. Name of conveying party(ies):  
**TESTAMERICA Incorporated**  
 122 Lyman Street  
 Asheville, NC 28801

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State DE  
 Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies):  
 Name: Metco Environmental, Inc.  
 Internal Address: \_\_\_\_\_  
 Street Address: 122 Lyman Street  
 City: Asheville State: NC ZIP: 28801

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State DE  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
 (Designations must be a separate document from Assignment)  
 Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment                       Merger  
 Security Agreement               Change of Name  
 Other \_\_\_\_\_

Execution Date: December 18, 1998

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s)  
See Schedule B to Assignment

B. Trademark registration No.(s)  
See Schedule B to Assignment

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Federal Research Corp  
 Internal Address: \_\_\_\_\_  
 Street Address: 400 Seventh St NW  
Suite 101  
 City Washington State: DC ZIP 20004

6. Total number of applications and registrations involved: ..... 2

7. Total fee (37 CFR 3.41): ..... \$6500  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_  
 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document*

LOUKIA HARRIS                      Loukiaharris                      1/4/98  
 Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments and document: 93

SCHEDULE B

1712557

1712375

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AGREEMENT OF PURCHASE

AND SALE OF ASSETS

By and Among

TESTAMERICA INCORPORATED,

MULLINS ENVIRONMENTAL TESTING CO., INC.

and

BILLY J. MULLINS, JR.

and

SANDRA H. MULLINS

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December 18, 1998

## ASSIGNMENT

Assignment and Assumption of Purchase Agreement (this "Assignment") made the 18<sup>th</sup> day of December, 1998, by **TESTAMERICA INCORPORATED**, a Delaware corporation and the successor-in-interest to HydroLogic, Inc., having its principal office at 122 Lyman Street, Asheville, North Carolina 28801 ("Assignor") in favor of **METCO ENVIRONMENTAL, INC.**, a Delaware corporation having its principal office at 122 Lyman Street, Asheville, North Carolina 28801 ("Assignee"). In consideration of ten dollars (\$10.00) and the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under (i) that certain Agreement of Purchase and Sale of Assets, dated December 18, 1998 by and between Assignor, MULLINS ENVIRONMENTAL TESTING CO., INC. ("MET"), Billy J. Mullins, Jr. ("Mullins") and Sandra H. Mullins (the "Purchase Agreement"), a copy of which is annexed hereto as Schedule A and made a part hereof; (ii) that certain Assignment of Intellectual Property dated December 18, 1998 by MET in favor of Assignor (the "Intellectual Property Assignment"), a copy of which is annexed hereto as Schedule B and made a part hereof; (iii) that certain Assignment and Assumption of Personal Property Leases, dated December 18, 1998 by MET in favor of Assignor (the "Personal Property Assignment"), a copy of which is annexed hereto as Schedule C and made a part hereof, and that certain Lease Agreement dated December 18, 1998 between Mullins and Assignor (the "Lease"), a copy of which is annexed hereto as Schedule D and made a part hereof.

2. Assignee hereby acknowledges and assumes any and all obligations, responsibilities and liabilities of Assignor under the Purchase Agreement, the Intellectual Property Assignment, the Personal Property Assignment and the Lease arising from and after the date hereof, and agrees to perform all of the terms, covenants and conditions on the part of the Assignor to be kept, performed or observed under the Purchase Agreement, the Intellectual Property Assignment, the Personal Property Assignment and the Lease from and after the date hereof.

3. This Assignment shall be binding on Assignor, Assignee and their respective successors and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of New York, without reference to the principles of conflict of law.

5. This Assignment may not be modified or amended in any manner other than by a written agreement signed by both parties hereto.

**IN WITNESS WHEREOF**, each party hereto has caused this Assignment to be executed by a duly authorized representative, on the day and year first above written.

ASSIGNOR:

**TESTAMERICA INCORPORATED**

By:   
Thomas R. Barr, President

ASSIGNEE:

**METCO ENVIRONMENTAL, INC.**

By:   
Thomas R. Barr, Chairman

**SCHEDULE A**

7454/v1

**TRADEMARK  
REEL: 1850 FRAME: 0006**

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# AGREEMENT OF PURCHASE AND SALE OF ASSETS

**AGREEMENT** (this "Agreement"), dated December 18, 1998, by and among **TESTAMERICA INCORPORATED**, a Delaware corporation and the successor-in-interest to HydroLogic, Inc., having its principal office at 122 Lyman Street, Asheville, North Carolina 28801 ("Purchaser"), **MULLINS ENVIRONMENTAL TESTING CO., INC.**, a Texas corporation having its principal office at 16115 Dooley Road, Dallas, Texas 75244 (hereinafter referred to as "Seller"), **BILLY J. MULLINS, JR.** and **SANDRA H. MULLINS**, each having an address at 17102 Club Hill Dr., Dallas, Texas 75248 (collectively, the "Shareholder").

## W I T N E S S E T H:

**WHEREAS**, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, substantially all of the assets constituting Seller's business on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and in order to set forth the terms and conditions of the purchase and sale of assets and the manner of carrying the same into effect, the parties hereto hereby agree as follows:

1. (a) Purchase and Sale of Assets. Except as set forth on Schedule 1(c) annexed hereto, subject to and upon the terms and conditions set forth in this Agreement, Seller agrees to sell, transfer, convey, assign and deliver to Purchaser (or a designated affiliate of Purchaser as contemplated by Section 2(e) hereof (a "Designee")), and Purchaser (or a Designee) agrees to purchase at the Closing (as defined in Section 3 hereof), all of the business, assets, properties, goodwill and rights of Seller as a going concern, of every nature, kind and description, tangible and intangible, wheresoever located and whether or not carried or reflected on the books and records of Seller (hereinafter sometimes collectively referred to as "Seller's Assets"), including, without limitation:

(i) all right, title and interest in and to any and all United States and foreign: (A) patents (including design patents, industrial designs and utility models) and patent applications (including, without limitation, docketed patent disclosures awaiting filing, reissues, divisions, continuations-in-part and extensions), patent disclosures awaiting filing determination, inventions and improvements thereto; (B) trademarks,

service marks, trade names (including, without limitation, any trade names acquired by Seller in connection with its acquisition of Seller's business, as may be applicable), trade dress, logos, business and product names, slogans, and registrations and applications for registration thereof; (C) copyrights (including, without limitation, software) and registrations thereof; (D) inventions, processes, designs, formulae, trade secrets, know-how, industrial models, confidential and technical information, manufacturing, engineering and technical drawings, product specifications and confidential business information; (E) mask work and registrations thereof; (F) intellectual property rights similar to any of the foregoing; (G) copies and tangible embodiments thereof (in whatever form or medium, including, without limitation, electronic media) (collectively, "Intellectual Property");

(ii) the assets referred to in the form of Bill of Sale as set forth in Schedule 1(a)(ii) annexed hereto;

(iii) the non-cash assets reflected on the Balance Sheet referred to in Section 6(g)(ii) hereof, with only such disposition of such assets as shall have occurred in the ordinary course of Seller's business between the Balance Sheet Date (as defined in Section 6(g)(ii) hereof) and the Closing;

(iv) all machinery, equipment, fixtures, leasehold improvements, furniture, furnishings, automobiles, trucks, vehicles, parts and other tangible personal property (including, but not limited to, any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other party);

(v) all inventory of equipment held for sale or rent, spare parts, replacement and component parts, and office and other supplies ("Inventories"), including Inventories held at any location for Seller and Inventories previously purchased and in transit to Seller;

(vi) all rights in and to Inventories (including, but not limited to, products hereafter returned or repossessed and unpaid, Seller's rights of rescission, replevin, reclamation and rights to stoppage in transit);

(vii) all rights (including, but not limited to, any and all Intellectual Property rights) in and to the products and services sold, rented or leased and in and

to any products or other Intellectual Property rights under research or development prior to or on the Closing Date;

(viii) all of the rights of the Seller under all Contracts (as defined in Section 6(z) hereof) and, including, without limitation, any right to receive payment for products sold or services rendered, and to receive goods and services, pursuant to such Contracts and to assert claims and take other rightful actions in respect of breaches, defaults and other violations of such Contracts;

(ix) all credits, prepaid expenses, deferred charges, return allowances, advance payments, security deposits and prepaid items;

(x) all books, records, manuals and other materials relating to the business of Seller (in any form or medium), including, without limitation, all records and materials maintained by Seller, advertising matter, catalogues, price lists, correspondence, mailing lists, lists of customers, distribution lists, photographs, production data, sales and promotional materials and records, purchasing materials and records, manufacturing and quality control records and procedures, blueprints, research and development files, records, data and laboratory books, Intellectual Property disclosures, media materials and plates, accounting records, and sales order files, but not including Seller's minute books and other books and records relating to Seller's corporate organization and governance;

(xi) to the extent their transfer is permitted by law, all consents, approvals, authorizations, waivers, permits, grants, franchises, concessions, agreements, licenses, exemptions or orders of regulation, certificate, declaration or filing with, or report or notice to any entity issued, executed, delivered or otherwise made to or for the benefit of Seller's Assets, including all applications thereof (collectively, the "Consents") including, but not limited to, the Consent (the "Governmental Approval") of any nation, or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any government authority, agency, department, board, commission or instrumentality of the United States, any state of the United States or any political subdivision

thereof, and any tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization (collectively, the "Governmental Authority" or "Governmental Authorities");

(xii) all rights to chose in action, causes of action, claims and rights of recovery or setoff, lawsuits, judgments, claims and demands of any nature available to or being pursued by the Seller with respect to Seller's business or the ownership, use, function or value of any of Seller's Assets whether arising by way of counterclaim or otherwise;

(xiii) all guarantees, warranties, indemnities and similar rights in favor of the Seller with respect to any of Seller's Assets;

(xiv) accrued sales (in respect of outstanding proposals or work-in-process), commitments, proposals, Contracts, understandings or commitments, whether oral or written, to perform services, advanced billings and unbilled costs (as set forth on Schedule 6(v) annexed hereto);

(xv) the fixed assets (the "Fixed Assets") listed on Schedule 1(a)(xv) annexed hereto and as provided on the Balance Sheet; and

(xvi) accounts and notes receivable of Seller as set forth on Schedule 6(g) annexed hereto.

(b) Assumed Liabilities.

(i) Seller's Assets shall be conveyed free and clear of all liabilities, obligations, liens, claims and encumbrances, excepting only those liabilities, obligations, liens, claims and encumbrances which are expressly to be assumed by Purchaser hereunder, if any. Purchaser shall assume at the Closing, and thereafter timely pay, perform or discharge, when due, the "Assumed Liabilities," except to the extent that any of such Assumed Liabilities have been paid or satisfied as of the Closing Date. As used herein, the term "Assumed Liabilities" (and individually an "Assumed Liability") shall mean the liabilities set forth on Schedule 1(b) annexed hereto which reflects such liabilities as at [August 31, 1998], which schedule shall be updated no later than thirty (30) days after the Closing Date to reflect the Assumed Liabilities as of the Closing Date.

(ii) Except as set forth on Schedule 1(b) annexed hereto, Purchaser shall not and does not assume any liabilities, obligations or commitments of Seller, other than the Assumed Liabilities, and Seller and the Shareholder shall be solely responsible, without limitation, for the following:

(A) Legal, accounting, brokerage and finder's fees and income, excise or real estate or other Transfer Taxes (as defined in Section 4(c) hereof) or other expenses incurred by Seller or the Shareholder in connection with this Agreement or the consummation of the transactions contemplated hereby.

(B) Debts, liabilities or obligations of any nature to any past or present shareholder of Seller;

(C) Any domestic, federal, state or local or foreign income, franchise, excise, use, property, payroll or similar taxes or any and all Taxes (as defined in Section 6(i) hereof) (including any and all penalties and interest thereon) imposed on Seller including, without limitation, those due as a result of the operation of Seller's business through the Closing Date, and the responsibility for payment of such taxes covering periods prior to and after the Closing shall be apportioned between Purchaser and Seller such that Seller and Purchaser shall be responsible for payment of such taxes in respect of periods prior to and after, respectively, the Closing; and

(D) Except as Purchaser shall have otherwise agreed herein, liabilities and obligations of Seller, if any, accruing prior to, on or after the Closing Date relating to Seller's employment of any of Seller's employees, including, without limitation, compensation, severance payments, if any, contributions to employee benefit plans, workers' compensation or other insurance claims.

(c) **Excluded Assets.** Seller's Assets do not include, and specifically exclude, the items set forth on Schedule 1(c) annexed hereto (hereinafter referred to as the "Excluded Assets").



(d) **Consent of Third Parties.** Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute an agreement to assign or transfer any Governmental Approval, instrument, Contract, lease, permit or other agreement or arrangement or any claim, right or benefit arising thereunder or resulting therefrom if an assignment or transfer or an attempt to make such an assignment or transfer without the consent of a third party would constitute a breach or violation thereof or affect adversely the rights of Purchaser or Seller thereunder; any transfer or assignment to Purchaser by Seller of any interest under any such instrument, Contract, lease, permit or other agreement or arrangement that requires the consent or approval of a third party shall be made subject to such consent or approval being obtained. In the event any such consent or approval is not obtained on or prior to the Closing Date, Seller and the Shareholder shall continue to use reasonable efforts to obtain such approval or consent after the Closing Date until such time as such consent or approval has been obtained, and Seller will cooperate with Purchaser in any lawful and economically feasible arrangement to ensure that Purchaser shall receive the interest of Seller in the benefits under any such instrument, Contract, lease or permit or other agreement or arrangement, including performance by Seller as agent, if economically feasible, provided, that Purchaser shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Purchaser would have been responsible therefor hereunder if such consent or approval had been obtained. Nothing in this Section 1(d) shall be deemed a waiver by Purchaser of its right to have received on or before the Closing an effective assignment of all of the Seller's Assets nor shall this Section 1(d) be deemed to constitute an agreement to exclude from the Seller's Assets any of the assets described in Section 1(a) hereof.

2. (a) **Purchase Price.** In consideration of the sale, transfer, conveyance, assignment and delivery of Seller's Assets by Seller to Purchaser, each of Seller and the Shareholder entering into the Non-Competition Undertakings (as defined in Section 4(a)(vii) hereof) and in reliance upon the representations and warranties made herein by Seller and the Shareholder, and in addition to Purchaser assuming the Assumed Liabilities, if any, Purchaser agrees, as full and total payment therefor, to deliver to Seller the following purchase price (the "Purchase Price") payable to Seller by delivery at such times as provided herein, subject to adjustments as provided in Section 2(b) hereof:

(i) at the Closing, the sum (the "Closing Payment") of eight million two hundred fifty thousand dollars (\$8,250,000) by wire transfer; and

(ii) in addition to the Closing Payment, at the Closing Purchaser shall issue to Seller a subordinated convertible promissory note bearing interest at the rate of eight percent (8%) per annum in the form of Schedule 2(a)(iii) annexed hereto (the "Subordinated Note"). The initial principal amount of the Subordinated Note shall be \$2,000,000 (the "Initial Principal Amount"), subject to adjustment in accordance with Section 2(c) below and shall be subject to the Subordination Agreements (as such term is defined in Section 2(c)(iv) hereof).

(b) **Closing Payment Adjustment.** (i) The Closing Payment shall be increased or decreased, if at all, as follows:

In the event that the "Net Working Capital" of Seller set forth on Seller's Closing Balance Sheet (as defined in Section 13(a) hereof) (the "Closing Balance Sheet Working Capital") is greater or lesser than the Net Working Capital set forth on Seller's Balance Sheet dated June 30, 1998 in the amount of \$1,550,000 ("June 30 Working Capital"), a copy of which is annexed hereto as Schedule 2(b)(i), the Closing Payment shall be increased or decreased, respectively, dollar for dollar, by the amount by which the Closing Balance Sheet Working Capital are greater or lesser, respectively, than the June 30 Working Capital. For purposes of this Section 2(b)(i) the term "Net Working Capital" shall mean current assets (other than Excluded Assets) minus current liabilities (other than liabilities not being assumed by Purchaser hereunder) determined in accordance with generally accepted accounting principles consistently applied; provided, however, that notwithstanding the foregoing, the calculation of Net Working Capital shall include, but not be limited to the items set forth on the form Closing Balance Sheet annexed hereto as Exhibit 2(b)(i).

(ii) Purchaser and Seller shall mutually determine the net amount due to one another, if any, in respect of the adjustment pursuant to Section 2(b)(i) hereof, and such net amount due Seller or Purchaser, as the case may be, shall be paid within ten (10) business days after the Closing Balance Sheet becomes final and binding in accordance with the procedures set forth in Section 13(c)(i) or Section 13(c)(ii) hereof. The obligation of the parties under this Section 2(b) shall survive the Closing. If any sums due pursuant to this Section 2(b) are later determined by the Purchaser in

good faith to be uncollectible or determined to have been calculated in error, either as a result of a restatement of the Closing Balance Sheet or otherwise, the obligations of Purchaser or Seller, as the case may be, to further adjust the Purchase Price and remit any sum hereunder shall survive the payment of any adjustment paid or payable pursuant to this Section 2(b).

(c) **Subordinated Note.** (i) Within ninety (90) days after the third anniversary of the Closing Date, Purchaser shall deliver to the parties hereto an income statement (the "Period Income Statement") with respect to the Company's Operations (as hereinafter defined) for the period commencing on the Closing Date and ending on the third anniversary of the Closing Date (the "Period") which shall set forth, among other things, the average earnings of the Company's Operations before taxes, depreciation and amortization (calculated in accordance with generally accepted accounting principles) ("Average EBTDA" for the following three periods: (A) the period commencing on the Closing Date and ending December 31, 1999, (B) the period commencing on January 1, 2000 and ending December 31, 2000, and (C) the period commencing on January 1, 2001 and ending December 31, 2001. The Period Income Statement and Average EBTDA shall be used to determine the adjustment to the Initial Principal Amount. Specifically, upon the date the Principal Amount Sum (as hereinafter defined) becomes final and binding in accordance with Section 2(c) vii) hereof (the "Adjustment Date"), the Initial Principal Amount of the Subordinated Note shall be replaced with a new principal amount (the "New Principal Amount") equal to the sum (the "Principal Amount Sum") of (I) \$1,000,000 plus (II) the product of (A) \$5,750,000 multiplied by (B) the quotient of (x) the difference between Average EBTDA minus \$2,250,000 divided by (y) \$1,500,000. By way of example, in the event that average EBTDA equals \$3,000,000, the New Principal Amount shall equal \$3,875,000. Furthermore, for purposes of calculating Average EBTDA, the following shall not be subtracted as expenses of the Company's Operations: (i) expenses of Purchaser not directly related to the Company's operations all as reasonably determined by Purchaser and (ii) interest and other expense incurred by the Purchaser directly attributable to the acquisition of Seller's Assets, all as mutually agreed upon by Purchaser and Seller.

(ii) Notwithstanding anything herein to the contrary, in the event that the Principal Amount Sum is equal to a number greater than \$6,750,000, then the New Principal Amount shall equal \$6,750,000, and in the event that the Principal Amount Sum is equal to a number less than \$1,000,000, then the New Principal Amount shall equal \$1,000,000. Payments on the principal amount of the Subordinated Note shall not be required to be made by Purchaser until the Adjustment Date, at which time such payments shall be made in three equal installments as follows: (A) within ten (10) business days after the Adjustment Date, (B) on December 31, 2002, and (C) on December 31, 2003. Interest on the principal amount outstanding of the Subordinated Note shall accrue at the rate of 8% per annum and be paid annually commencing on December 31, 1999. In addition to the annual payments of interest to be made by Purchaser on the Subordinated Note, in the event that the New Principal Amount is greater than the Initial Principal Amount, then within ten (10) business days after the Adjustment Date Purchaser shall make an additional one-time interest payment to Seller equal to the difference between (A) the sum of the annual interest payments on the Subordinated Note that would have been payable by Purchaser to Seller in respect of the period commencing on the Closing Date and ending on the Adjustment Date (the "Pre-Adjustment Period") assuming the New Principal Amount had been in effect since the Closing Date minus (B) the sum of the annual interest payments actually paid by Purchaser to Seller in respect of the Pre-Adjustment Period; provided, however, that in the event that the New Principal Amount is less than the Initial Principal Amount, immediately after the Adjustment Date the New Principal Amount shall be reduced by an amount equal to the difference between (A) the sum of the annual interest payments actually paid by Purchaser to Seller in respect of the Pre-Adjustment Period minus (B) the sum of the annual interest payments on the Subordinated Note that would have been made by Purchaser to Seller in respect of the Pre-Adjustment Period assuming the New Principal Amount had been in effect since the Closing Date.

(iii) In the event that the Purchaser effects an initial public offering ("IPO") of its equity securities pursuant to an effective registration statement under Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), then commencing on the Adjustment Date the Seller or Shareholder, upon delivering prior written notice to the Purchaser (the "Initial Notice"), shall have the

option to convert an aggregate amount (the "Aggregate Conversion Amount") of up to 40% of the principal amount of the Subordinated Note outstanding on the effective date of the Initial Notice into shares of the common stock, par value \$.01 per share (the "Common Stock"), of the Purchaser at a price per share of Common Stock equal to 67% of the initial public offering price per share to the public of the Common Stock; it being the understanding of the parties hereto that although Seller, in the event Purchaser consummates an IPO, shall be entitled to convert the principal amount of the Subordinated Note into Common Stock at any time and from time to time commencing on the Adjustment Date, the sum of the amounts of the principal amount of the Subordinated Note converted into Common Stock hereunder shall not exceed the Aggregate Conversion Amount. It is expressly understood and agreed that the shares of Common Stock to be issued upon conversion of the Subordinated Note shall not be registered under Section 5 of the Securities Act, and Purchaser shall have no obligation to register such shares, which will bear a restrictive legend substantially in the following form:

**THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS. THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED (I) IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AND QUALIFICATION IN EFFECT WITH RESPECT THERETO UNDER THE SECURITIES ACT AND UNDER ANY APPLICABLE STATE SECURITIES LAW OR (II) UNLESS AN OPINION OF TESTAMERICA, INC.'S COUNSEL THAT SUCH REGISTRATION AND QUALIFICATION IS NOT REQUIRED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS AND THERE IS AN EXEMPTION THEREFROM.**

(iv) The Subordinated Note shall be subordinated and subject in right of payment to the prior payment by Purchaser in full of all of Purchaser's debt facilities. The indebtedness evidenced by the Subordinated Note shall be expressly subordinated to the extent and the manner set forth in the (i) Subordination Agreement dated December \_\_, 1998 among TestAmerica Incorporated f/k/a Hydrologic, Inc., National Environmental Testing, Inc., Geotek Drilling

Company, Inc., Specialized Assays, Inc., West Hazmat Drilling Corp., Fleet Capital Corporation ("Fleet"), as agent for the various financial institutions named therein as lenders or which hereafter become a party thereto pursuant to the terms thereof (Fleet and such lenders collectively, the "Lenders"), and Fleet as administrative and collateral agent for the Lenders (the "Fleet Subordination Agreement") and (ii) Subordination Agreement dated December \_\_, 1998 among TestAmerica Incorporated f/k/a Hydrologic, Inc., National Environmental Testing, Inc., Geotek Drilling Company, Inc., Specialized Assays, Inc., West Hazmat Drilling Corp., Key Mezzanine Capital L.L.C., and Regis Capital Partners, L.P. (collectively with the Fleet Subordination Agreement, the "Subordination Agreements").

(v) For purposes of this Agreement, the term "Company's Operations" shall mean all stack sampling operations of the Purchaser from and after the Closing Date after giving effect to all future expansion of the Purchaser into stack sampling operations and all acquisitions of the Purchaser (whether by purchase of assets, purchase of stock, merger, or otherwise) of businesses engaged in stack sampling operations (but excluding that portion of such businesses not engaged in stack sampling operations); provided, however, that notwithstanding anything herein to the contrary, the cost of capital, as reasonably determined by the Purchaser in its sole discretion, to the Purchaser in connection with such expansion and acquisitions shall be deemed an interest expense of Purchaser and subtracted as an expense of the Company's Operations in the calculation of Average EBTDA, and provided further, (i) notice of the cost of capital with respect to such acquisition shall be provided to Seller or the Shareholder ten (10) business days prior to the consummation of any acquisition, and (ii) Seller or the Shareholder shall have the right to exclude the operations of such acquisition from the calculation of Average EBTDA by giving the Purchaser notice thereof no later than ten (10) business days from and after the consummation of any such acquisition. In addition, any synergies created by the combination of the Purchaser and the acquisition of Seller's Assets from and after the Closing, including, but not limited to, cross-selling, purchasing economies of scale and administrative savings, all as reasonably determined by Purchaser in its sole discretion, which directly increase the earnings of the Company, shall be added to the earnings of the Company's Operations in the calculation of Average EBTDA. Notwithstanding anything

herein to the contrary, with respect to those testing services which were customarily outsourced by Seller prior to the Closing, in the calculation of Average EBTDA hereunder Purchaser shall subtract as an expense of the Company's Operations an amount equal to the greater of: (a) 85% of the revenue generated after the Closing by Purchaser in respect of such services which are not outsourced by Purchaser, or (b) the actual cost incurred by Purchaser after the Closing in respect of such services which are not outsourced by Purchaser.

(vi) Purchaser shall provide to Seller and Shareholder full access to all of its books and records with respect to such accountant's preparation of the Period Income Statement and calculation of Average EBTDA and New Principal Amount, and shall otherwise fully cooperate with such accountants in connection with the preparation of the Period Income Statement and calculation of Average EBTDA and New Principal Amount.

(vii) After receipt of the Period Income Statement, which shall set forth the Average EBTDA, Shareholder and Purchaser shall have twenty (20) days to object in writing to any or all the amounts presented therein and to the New Principal Amount as calculated by Purchaser.

(A) In the event that Shareholder and Purchaser do not so object by the twentieth (20th) day (or such earlier date as agreed to by the Shareholder and the Purchaser) after delivery of the Period Income Statement and the calculation of the New Principal Amount as originally prepared and determined under this Section 2(c), such Period Income Statement and calculation of the New Principal Amount shall become final and binding on parties.

(B) In the event that either Shareholder or Purchaser object to any portion of the Period Income Statement or the calculation of the New Principal Amount, Purchaser and Shareholder shall promptly attempt to resolve their differences by having their respective accounting firms meet. In the event the dispute is not resolved within thirty (30) days of either party's written objection, the parties agree to promptly subject the matter to binding arbitration in accordance with Section 15(1) hereof.

(d) **Allocation of Purchase Price.** The Purchase Price payable pursuant to Section 2(a) hereof shall be allocated as

provided on Schedule 2(d) annexed hereto. The parties hereto agree to use such allocation for purposes of filing Internal Revenue Service Form 8594 (Asset Acquisition Statement under Section 1060) pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the "Code").

(e) **Acquisition by Affiliates.** Notwithstanding anything to the contrary in this Agreement, Purchaser may cause Seller's Assets to be acquired by one (1) or more Affiliates (as hereinafter defined) of Purchaser; provided, however, that Purchaser shall remain liable for all obligations of Purchaser hereunder. The term "Affiliates" as used in this Agreement shall have the same meaning as set forth under the definition of "affiliates" in Rule 405 of the Securities Act of 1933, as amended. Purchaser hereby absolutely, unconditionally and irrevocably guarantees to Seller the due and punctual payment and performance of, and agrees to pay and perform as primary obligor, all terms, covenants, liabilities, obligations, duties, required acts of any nature, and conditions contained in this Agreement. Seller shall have the right to demand payment and performance from and proceed against Purchaser for the enforcement of the obligations under this Agreement without the necessity of first having to institute suit or exhaust its remedies against Affiliate.

3. **Closing.** The closing of the transactions contemplated under this Agreement (the "Closing") shall take place by facsimile transmission (with original signature pages sent by overnight courier) or at the offices of Zukerman Gore & Brandeis, LLP, 900 Third Avenue, New York, New York 10022 simultaneously with the mutual execution and delivery of this Agreement. The day on which the Closing actually takes place is herein sometimes referred to as the "Closing Date."

4. **Seller's and the Shareholder's Obligations at Closing; Further Assurances.**

(a) **Delivery.** At the Closing, Seller and the Shareholder agree to deliver to Purchaser (and, as applicable, execute):

- (i) a Bill of Sale duly executed by Seller in substantially the form of Schedule 1(a)(ii) hereto;
- (ii) such other good and sufficient deeds, bills of sale, endorsements, assignments, documents of title and other instruments of conveyance, assignment and transfer, in form and substance reasonably satisfactory to Purchaser's counsel, as shall be effective to vest in Purchaser good title to Seller's Assets:



(iii) all contracts, files and other data (including, without limitation, lists of orders and computer disks and tapes) and documents pertaining to Seller's Assets;

(iv) a certified copy of resolutions adopted by Seller's Board of Directors and the Shareholder authorizing the execution, delivery and performance of this Agreement;

(v) a copy of Seller's certificate of incorporation, as amended, certified by the Office of the Secretary of State of the State of Texas (the "Texas Secretary of State"), and a true and correct copy of the amended by-laws of Seller (which are satisfactory to Purchaser) as certified by the secretary of Seller;

(vi) the opinion of Seller's counsel, substantially in the form of Schedule 4(a)(vi) annexed hereto;

(vii) the Non-Competition Undertaking of Billy J. Mullins, Jr. (the "Non-Competition Undertakings"), in the form of Schedule 4(a)(vii) annexed hereto;

(viii) the Employment Agreement (the "Mullins Employment Agreement") between Billy J. Mullins, Jr. and Purchaser in the form of Schedule 4(a)(viii) annexed hereto;

(ix) an assignment and assumption agreement for the equipment leases in substantially the form of Schedule 4(a)(ix) annexed hereto (the "Personal Property Assignment");

(x) an assignment agreement for the Intellectual Property in substantially the form of Schedule 4(a)(x) annexed hereto (the "Intellectual Property Assignment");

(xi) all Consents, including, without limitation, those necessary in connection with the Personal Property Assignment and the Intellectual Property Assignment;

(xii) a copy of an amended certificate of incorporation of Seller changing its name to a name that does not include the words Metco Environmental and "Mullins Environmental Testing Company" in form reasonably satisfactory to Purchaser's counsel, and which Seller shall cause to be filed with the Texas Secretary of State promptly following Closing;

(xiii) Governmental Approvals, if required;

(xiv) that certain Lease Agreement between Seller and Purchaser in the form of Schedule 4(a)(xiv) annexed hereto (the "New Lease"); and

(xv) all other documents and instruments required to be delivered to Purchaser pursuant to the provisions of this Agreement.

(b) **Billings.** Seller agrees that from and after the Closing Date, Purchaser shall have the right and authority to bill and collect for its own account all billings in respect of Seller's accounts receivable and work-in-process, if any, that are being transferred to Purchaser as provided herein; provided, however, that Purchaser shall not file a lawsuit for the collection of such billings until such time as Purchaser, after cooperating for a reasonable period of time with Seller to collect such billings shall determine in good faith that filing such lawsuit is the best procedure available to collect such billings. Seller agrees that it will promptly transfer and deliver to Purchaser any cash or other property which Seller may receive in respect of such billings.

(c) **Liability for Transfer Taxes.** Seller shall be responsible for the timely payment of, and shall indemnify and hold harmless Purchaser against, all income, sales (including, without limitation, bulk sales), use, value added, documentary, stamp, gross receipts, registration, transfer, conveyance, excise, recording, license and other similar Taxes (as defined in Section 6(i) hereof) and fees (collectively, "Transfer Taxes"), arising out of or in connection with or attributable to the transactions effected pursuant to this Agreement and the Related Agreements. Seller shall prepare and timely file all tax returns required to be filed in respect of Transfer Taxes (including, without limitation, all notices required to be given with respect to bulk sales taxes, if required), provided that Purchaser shall be permitted to prepare any such tax returns that are the primary responsibility of Purchaser under applicable law. Purchaser's preparation of any such tax returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld or delayed.

(d) **Certificates of Tax Authorities.** On or before the Closing Date, Seller shall provide to Purchaser copies of certificates, if available, from appropriate taxing authorities stating that appropriate withholding tax returns, sales and use tax returns, and income tax returns (or extensions to file returns), have been filed through December 31, 1997, and that all taxes shown as due and payable on such reports have been paid. Seller agrees that it shall file returns with appropriate taxing

authorities after the Closing, shall pay all taxes shown as due and payable with respect to such reports, and shall obtain and deliver to Purchaser similar certificates with respect to the payment of such taxes through the Closing Date.

(e) **Use of Business Name.** After the Closing, Seller and the Shareholder will not, directly or indirectly, use or do business, or allow any Affiliates of the Seller or Shareholder to use or do business, or assist any third party in using or doing business, under the names and marks "Metco Environmental" and "Mullins Environmental Testing Company" (or any other name confusingly similar to such names and marks or any variation thereof).

(f) **Further Assurances.** At any time and from time to time after the Closing, at Purchaser's request and expense, without further consideration, Seller and the Shareholder shall execute and deliver such other additional instruments of sale, transfer, conveyance, assignment and confirmation and take such other action as Purchaser may reasonably deem necessary or desirable in order to transfer, convey and assign to Purchaser Seller's Assets and to put Purchaser in actual possession and operating control thereof and to assist Purchaser in exercising all of Seller's rights with respect thereto and to take such action and execute such documents or instruments as may be reasonably requested by Purchaser in connection with any governmental or regulatory matters or filings required to be made by Purchaser, including, without limitation, any filings, documents or instruments to be delivered to the United States Securities and Exchange Commission (the "SEC") or any other Governmental Authority, Purchaser's lenders, auditors or any other appropriate party.

5. **Purchaser's Obligations at Closing.** (a) At the Closing, Purchaser agrees to deliver, or cause to be delivered, as the case may be, to Seller (and, as applicable, execute):

- (i) the Closing Payment and Subordinated Note;
- (ii) a certified copy of resolutions adopted by the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and Purchaser's Related Agreements (as defined in Section 7(a) hereof);
- (iii) the Mullins Employment Agreement;
- (iv) the Personal Property Assignment and the Intellectual Property Assignment;
- (v) the New Lease; and

(vi) all other documents and instruments required to be delivered to Seller pursuant to the provision of this Agreement.

(b) At any time and from time to time after the Closing, at Seller's request and expense, Purchaser shall execute and deliver such other additional instruments as Seller may reasonably deem necessary to evidence Purchaser's obligations under this Agreement, and Purchaser agrees to take such actions as may be reasonably necessary to carry out the purposes and intentions of this Agreement. For a reasonable period of time following the Closing, Purchaser shall provide Seller with reasonable access to all books and records of Seller that are delivered to Purchaser hereunder relating to Seller's Assets and the period through the Closing Date.

**6. Representations and Warranties of Seller and the Shareholder.** Seller and the Shareholder, jointly and severally, represent and warrant to Purchaser, as of the date of this Agreement as follows:

(a) **Organization, Standing and Qualification.**

Seller (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas; (ii) has all requisite corporate power and authority and is entitled to carry on its business as now being conducted and to own, lease or operate its properties in the places where such business is now conducted and such properties are now owned, leased or operated; and (iii) is duly qualified, licensed and in good standing as a foreign corporation authorized to do business in the states listed on Schedule 6(a) annexed hereto, which are the only states where the failure to be so qualified would have a material adverse effect on the condition, financial or otherwise, of Seller. Seller has delivered to Purchaser true and complete copies of its certificate of incorporation and all amendments thereto, certified as true and correct by the Office of the Secretary of State of the State of Texas, and the by-laws of Seller as presently in effect, certified as true and correct by the secretary of Seller.

(b) **Subsidiaries.** Seller has no subsidiaries except those listed on Schedule 6(b) annexed hereto. Seller owns all of the outstanding capital stock of all of the subsidiaries listed on Schedule 6(b) annexed hereto. Except as set forth on Schedule 6(b) annexed hereto, Seller has no interest, directly or indirectly, and has no commitment to purchase any interest, directly or indirectly, in any other corporation or in any partnership, joint venture or other business enterprise or entity. Except as set forth on Schedule 6(b) annexed hereto, the business carried on by Seller has not been conducted through any other direct or indirect subsidiary or Affiliate of any present

or former shareholder of Seller. Except as set forth on Schedule 6(b) annexed hereto, there are no securities of any subsidiary of Seller directly or indirectly convertible, exercisable or exchangeable for any of the capital stock of any subsidiary of Seller, including, but not limited to, any options, warrants, rights, agreements, understandings or commitments, vested or unvested, of any nature whatsoever relating to the capital stock of any subsidiary of Seller.

(c) Transactions with Certain Persons. Except as set forth on Schedule 6(c) annexed hereto, Seller has not directly or indirectly, purchased, leased from others or otherwise acquired any property or obtained any services from, or sold, leased to others or otherwise disposed of any property or furnished any services to, or otherwise dealt with (except with respect to remuneration for services rendered as a director, officer or employee of Seller), in the ordinary course of business or otherwise (i) any shareholder of Seller, or (ii) any Affiliates of Seller or the Shareholder. Except as set forth on Schedule 6(c) annexed hereto, Seller does not owe any amount to, or have any contract with or commitment to, any of its shareholders, directors, officers, employees or consultants (other than compensation for current services not yet due and payable and reimbursement of expenses arising in the ordinary course of business), and none of such persons owes any amount to Seller. Except as set forth on Schedule 6(c) annexed hereto, no part of the property or assets of the shareholders of Seller are used by Seller. Except as set forth on Schedule 6(c) annexed hereto, no part of the property or assets of Seller are used by the shareholders of Seller for their personal benefit or any purpose not related to the business of Seller.

(d) Execution, Delivery and Performance of Agreement; Authority. Except as set forth on Schedule 6(d) annexed hereto, neither the execution, delivery nor performance of this Agreement and all other agreements to which Seller or the Shareholder is a party required to be delivered by Seller and the Shareholder, as applicable, pursuant to Section 4(a) hereof (which documents are hereinafter sometimes collectively referred to as "Seller's Related Agreements") by Seller or the Shareholder will, with or without the giving of notice or the passage of time, or both, conflict with, result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance pursuant to any provision of Seller's certificate of incorporation or by-laws or any franchise, mortgage, deed of trust, lease, license, agreement, Applicable law, rule or regulation or any order, judgment or decree to which Seller or the Shareholder are a party or by which any of them may be bound or materially or adversely affected or require any consent, authorization, approval or any other action by, or any notice to, or filing or registration with, any

Governmental Authority or other third party. Except as set forth on Schedule 6(d) annexed hereto, no other party, including, without limitation, any present or former partner, shareholder in common with, or employee of Seller (other than the Shareholder) has, may or will have any right to the Shareholder's interest in Seller or the proceeds of the sale of Seller's Assets. No Consent is required to be obtained or made by Seller or the Shareholder in connection with the execution and delivery of this Agreement or the Seller's Related Agreements and to consummate the transactions contemplated hereby. Seller and the Shareholder have the full power and authority to enter into this Agreement and, as applicable, Seller's Related Agreements and to carry out the transactions contemplated hereby, as applicable, all proceedings required to be taken by them to authorize and approve the execution, delivery and performance of this Agreement and Seller's Related Agreements have been properly taken, and this Agreement and Seller's Related Agreements constitute valid and binding obligations of Seller and the Shareholder, enforceable in accordance with their terms, except that such enforcement may be subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium and similar law affecting creditors' rights generally. The execution, delivery and performance of this Agreement and Seller's Related Agreements have been duly authorized, to the extent required by Applicable law and by all requisite corporate and shareholder action of Seller, if necessary.

(e) **Capitalization.** The authorized capital of Seller consists of 1,000,000 shares, par value \$1.00 per share, of which 1,000 shares are issued and outstanding on the date hereof. All of the shares of capital stock of Seller have been duly authorized and validly issued and are fully paid and non-assessable. All of the presently authorized, issued and outstanding shares of capital stock of Seller are owned by the Shareholder in the proportions set forth on Schedule 6(f) annexed hereto. Except as otherwise disclosed on Schedule 6(e) annexed hereto, there are no outstanding subscriptions, rights, options, warrants, calls, contracts, demands, commitments, convertible securities or other agreements or arrangements of any character or nature whatsoever under which Seller, any subsidiary, or the Shareholder are or may become obligated to issue, assign or transfer any shares of the capital stock of Seller

(f) **Ownership of the Seller's Capital Stock.** The lawful record and beneficial owners of all of Seller's capital stock are set opposite their name on Schedule 6(f) annexed hereto. Each Shareholder represents and warrants solely with respect to the stock owned by him that such stock is free and clear of any liens, claims, encumbrances or restrictions of any kind. Except as set forth on Schedule 6(f) annexed hereto, neither Seller nor the Shareholder nor any of their respective

Affiliates is a party to or otherwise subject to any agreement, understanding or arrangement regarding the transfer, sale, disposition, purchase, acquisition or voting of Seller's capital stock.

(g) **Financial Statements.** Seller has delivered to Purchaser copies of the following financial statements (hereinafter, collectively, the "Financial Statements"), copies of which are annexed hereto as Schedule 6(g), all of which are true, accurate and correct, and have been prepared in good faith from the books and records of Seller in conformity with generally accepted accounting principles consistently applied and fairly present the financial position and results of operations of Seller at such dates and for the periods then ended:

(i) Balance Sheets and related statements of operations (including the notes thereto) of Seller prepared by Seller as at December 31, 1995, December 31, 1996 and December 31, 1997 and for the periods then ended; and

(ii) Balance Sheets and related income statements of operations (including the notes thereto) of Seller prepared by Seller as at August 31, 1998 and for the eight (8) month period then ended. (The Balance Sheet and related income statement for the period ended August 31, 1998 is hereinafter referred to as the "Balance Sheet" and the date August 31, 1998 is hereinafter referred to as the "Balance Sheet Date").

Such Financial Statements do not contain any items of special or nonrecurring income or any other income not earned in the ordinary course of business except as expressly specified therein.

(h) **Absence of Undisclosed Liabilities.** As of the Balance Sheet Date, except as reflected in the Balance Sheet or as disclosed in the notes thereto all of which were incurred in the ordinary course of business, Seller had no debts, liabilities or obligations (whether absolute, accrued, contingent or otherwise) of any nature whatsoever.

(i) **Taxes.** Except as set forth on Schedule 6(i) annexed hereto, all Taxes imposed by the United States or by any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing authority, which are due or payable by Seller or any Affiliate of Seller, and all interest and penalties thereon, whether disputed or not, have been paid in full; all tax returns required to be filed in connection therewith have been accurately prepared and duly and timely filed prior to the

expiration of any available extension periods; and all deposits required by law to be made by Seller or any Affiliate of Seller with respect to employees' withholding taxes have been duly made, except for the current reporting period which will be paid when due. Seller is not currently delinquent in the payment of any foreign or domestic tax, assessment or governmental charge or deposit and has no tax deficiency or claim outstanding, or proposed or assessed against it, and, to its knowledge, there is no basis for any such deficiency or claim. Except as set forth on Schedule 6(i) annexed hereto, there is not now in force any extension of time with respect to the date on which any tax return was or is due to be filed by or with respect to Seller. As used in this Agreement, "Taxes" shall include, without limitation, all federal, state, provincial, local, foreign or other income, alternative minimum, accumulated earnings, add-on, personal holding company, franchise, capital stock, net worth, capital, profits, gross receipt, value added, sales, use, goods and services, transaction, excise, customs, duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, charges, fees, severance, environmental (including, taxes under Section 59A of the Code), real property, gains, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, withholding, estimated or other similar tax, duty or other governmental charge or assessment or deficiency thereof, including all interest and penalties thereon and additions thereto whether disputed or not.

(j) Absence of Changes or Events. Except as set forth on Schedule 6(j) annexed hereto, since the Balance Sheet Date, Seller has conducted its business only in the ordinary course and has not:

(i) incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, except current liabilities for trade or business obligations in the ordinary course of business and consistent with its prior practice, none of which liabilities, in any case or in the aggregate, materially and adversely affects the business, properties, assets, liabilities or condition, financial or otherwise, of Seller;

(ii) discharged or satisfied any lien, charge or encumbrance other than those then required to be discharged or satisfied, or paid any obligation or liability, absolute, accrued, contingent or otherwise, whether due



or to become due, other than current liabilities shown on the Balance Sheet and current liabilities incurred since the Balance Sheet Date in the ordinary course of business and consistent with its prior practice;

(iii) declared or made any payment of dividends or other distribution to its shareholders or upon or in respect of any shares of its capital stock, or purchased, retired or redeemed, or obligated itself to purchase, retire or redeem, any of its shares of capital stock or other securities;

(iv) mortgaged, pledged or subjected to lien, charge, security interest or any other encumbrance or restriction any of its property, business or assets, tangible or intangible;

(v) sold, transferred, leased to others or otherwise disposed of any of its assets except in the ordinary course of business, or canceled or compromised any debt or claim, or waived or released any right of substantial value;

(vi) received any notice of termination of any contract, lease or other agreement or suffered any damage, destruction or loss (whether or not covered by insurance) which, in any case or in the aggregate, has had a materially adverse effect on its assets, properties, operations or prospects;

(vii) encountered any labor union organizing activity, had any actual or threatened employee strikes, work stoppages, slow-downs or lock-outs or had any material change in its relations with its employees, agents, customers or suppliers;

(viii) transferred or granted any rights under, or entered into any settlement regarding the breach or infringement of, any United States or foreign license, patent, copyright, trademark, trade name, invention or similar rights, or modified any existing rights with respect thereto;

(ix) made any material change in the rate of compensation, commission, bonus or other direct or indirect remuneration payable, or paid or agreed or orally promised to pay conditionally or otherwise, any material bonus, extra compensation, pension or severance or vacation pay, to any shareholder, director, officer, employee, salesman, distributor or agent of Seller;

(x) issued or sold any shares of its capital stock or other securities, or issued, granted or sold any options, rights or warrants with respect thereto, or acquired any capital stock or other securities of any corporation or any interest in any business enterprise, or otherwise made any loan or advance to or investment in any person, firm or corporation;

(xi) made any capital expenditures or capital additions or betterments in excess of an aggregate of \$10,000;

(xii) changed its banking or safe deposit arrangements;

(xiii) instituted, settled or agreed to settle any litigation, action or proceeding before any court or governmental body relating to Seller or its property;

(xiv) failed to replenish its inventories and supplies in a normal and customary manner consistent with its prior practice or made any purchase commitment in excess of the normal, ordinary and usual requirements of its business or at any price in excess of the then current market price or upon terms and conditions more onerous than those usual and customary in the industry, or made any material change in its selling, pricing, advertising or personnel practices inconsistent with its prior practice or, if so, consistent with prudent business practices prevailing in the industry;

(xv) suffered or continued to suffer any change, event or condition which, in any case or in the aggregate, has had or may have a materially adverse affect on Seller's condition (financial or otherwise),

properties, assets, liabilities, operations or prospects including, without limitation, any change in Seller's revenues, costs, levels of committed business or relations with its employees, agents, customers or suppliers;

(xvi) entered into any transaction, contract or commitment other than in the ordinary course of business or paid or agreed to pay any legal, accounting, brokerage, finder's fee, taxes or other expenses in connection with, or incurred any severance pay obligations by reason of this Agreement or the transactions contemplated hereby; or

(xvii) entered into any agreement or made any commitment, whether written or oral, to take any of the types of action described in subparagraphs (i) through (xvi) above.

(k) **Litigation.** Except as set forth on Schedule 6(k) annexed hereto, there is no claim, charge, legal action, suit, arbitration or other legal or administrative proceeding (or governmental investigation) for which Seller or any Shareholder has received service of process or written notice of any nature in respect thereof, or any order, decree or judgment in progress, pending or in effect, or, to the best actual knowledge of the Shareholder, threatened against or relating to Seller, its officers or directors (including, without limitation, the Shareholder), its properties, assets or business in connection with the transactions contemplated by this Agreement, and neither Seller nor the Shareholder knows or has reason to be aware of any basis for the same.

(l) **Compliance with Laws and Other Instruments.** Except as set forth in Schedule 6(l) annexed hereto, Seller has complied in all material respects with all existing material laws, rules, regulations, ordinances, orders, judgments and decrees now or hereafter applicable to its business, properties or operations. Neither the ownership nor use of Seller's Assets nor the conduct of its business conflicts with the rights of any other person, firm or corporation, or violates, or with or without the giving of notice or the passage of time, or both, will violate, conflict with or result in a default, right to

accelerate or loss of rights under, any terms or provisions of its certificate of incorporation or by-laws as presently in effect, or any lien, encumbrance, mortgage, deed of trust, lease, license, agreement, understanding, law, ordinance, rule or regulation, or any order, judgment or decree to which it is a party or by which it may be bound or affected.

(m) **Title to Properties.** Seller has good and marketable title to Seller's Assets. Except as set forth on Schedule 6(m) annexed hereto, none of Seller's Assets are subject to any loan agreement, conditional sale or title retention agreement, equipment obligation, lease purchase agreement, mortgage, indenture, pledge, security agreement, guaranty, lien, charge, security interest, encumbrance, restriction, lease, license, easement, liability or adverse claim of any nature whatsoever (excluding trade and account payables incurred and outstanding in the ordinary course of business), direct or indirect, whether accrued, absolute, contingent or otherwise (collectively, "Encumbrances"). Set forth on Schedule 6(m) annexed hereto is an accurate and complete list and description of (i) all machinery, tools, equipment, motor vehicles and other tangible personal property (other than supplies), owned, leased or used by Seller except for items having, individually, a value of less than \$1,000 which do not, in the aggregate, have a total value of more than \$10,000; and (ii) all Encumbrances to which Seller is a party or by which it is bound. Neither Seller nor the Shareholder has sold, transferred, assigned or otherwise conveyed any right, title or interest in or to any of Seller's customer lists or any rights thereto.

(n) **Insurance.** Set forth on Schedule 6(n) annexed hereto is an accurate and complete list, together with a brief description, of all fire, theft, casualty, liability and other insurance policies procured by Seller in the current policy year, specifying with respect to each such policy the name of the insurer, the risk insured against, the limits of coverage, the deductible amount (if any), the premium rate and the date through which coverage will continue by virtue of premium already paid. Except as set forth on Schedule 6(n) annexed hereto, all insurance policies relating to Seller are in full force and effect, and all premiums due thereon have been paid. Set forth on Schedule 6(n) annexed hereto, is a description of all open claims made by Seller under any policy of insurance and all claims which in the opinion of Seller

reasonably formed and held, should or could be made under any such policy.

(o) **Territorial Restrictions.** Seller is not restricted by any written agreement or understanding with any party from carrying on the business conducted by Seller anywhere in the world. Purchaser, solely as a result of its purchase of Seller's Assets and the assumption of the Assumed Liabilities, will not thereby become restricted in carrying on any business anywhere in the world.

(p) **Intellectual Property.**

(i) **Title.** Schedule 6(p)(i) annexed hereto contains a complete and correct list of all United States and foreign: (A) patents (including, without limitation, design patents, industrial designs and utility models) and patent applications (including docketed patent disclosures awaiting filing, reissues, divisions, continuations-in-part and extensions), patent disclosures awaiting filing determination, inventions and improvements thereto; (B) trademarks, service marks, trade names, trade dress, logos, business and product names, slogans, and registrations and applications for registration thereof; (C) copyrights (including, without limitation, software) and registrations thereof; (D) inventions, processes, designs, formulae, trade secrets, know-how, industrial models, confidential and technical information, manufacturing, engineering and technical drawings, product specifications and confidential business information; (E) mask work and other semiconductor chip rights and registrations thereof; (F) intellectual property rights similar to any of the foregoing; (G) copies and tangible embodiments thereof (in whatever form or medium, including, without limitation, electronic media) (collectively, "Intellectual Property") that is owned by Seller (the "Owned Intellectual Property") other than (1) inventions, trade secrets, processes, formulas, compositions, designs and confidential business and technical information and (2) Intellectual Property that is not registered or subject to application for registration. Seller owns or

has the exclusive right to use pursuant to license, sublicense, agreement or permission all Owned Intellectual Property, free from any Encumbrances and free from any requirement of any past, present or future royalty payments, license fees, charges or other payments, or conditions or restrictions whatsoever. The Owned Intellectual Property comprise all of the Intellectual Property necessary for Purchaser to conduct and operate Seller's business as now being conducted.

(ii) Transfer. Immediately after the Closing, Purchaser will own all of the Owned Intellectual Property and will have the right to use all Intellectual Property, free from any liens and on the same terms of any person in effect prior to the Closing.

(iii) No Infringement. To the actual knowledge of Seller and the Shareholder, the conduct of the Seller's business does not infringe or otherwise conflict with any rights of any person in respect of any Intellectual Property.

(iv) Licensing Arrangements. Schedule 6(p)(iv) annexed hereto sets forth all material agreements, arrangements or laws (A) pursuant to which Seller has licensed Intellectual Property to, or the use of Intellectual Property is otherwise permitted (through non-assertion, settlement or similar agreements or otherwise) by, any other party and (B) pursuant to which Seller has had Intellectual Property licensed to it, or has otherwise been permitted to use Intellectual Property. All of the agreements or arrangements set forth on Schedule 6(p)(iv) annexed hereto (x) are in full force and effect in accordance with their terms and no default exists thereunder by Seller, or to the knowledge of Seller or the Shareholder, by any other party thereto, (y) are free and clear of all liens, and (z) do not contain any change in control or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the transactions contemplated by this Agreement. Seller has delivered to the Purchaser true and complete copies of all

licenses and arrangements (including amendments) set forth on Schedule 6(p)(iv) annexed hereto. All royalties, license fees, charges and other amounts currently payable by, on behalf of, to, or for the account of, Seller in respect of any Intellectual Property are disclosed in the Financial Statements.

(v) No Intellectual Property Litigation. No claim or demand has been received nor is there any proceeding that is pending, or to the knowledge of Seller or the Shareholder, threatened, which (A) challenges the rights of Seller in respect of any Intellectual Property, (B) asserts that Seller is infringing or otherwise in conflict with, or is, except as set forth on Schedule 6(p)(iv) annexed hereto, required to pay any royalty, license fee, charge or other amount with regard to, any Intellectual Property, or (C) claims that any default exists under any agreement or arrangement listed on Schedule 6(p)(iv) annexed hereto. None of the Intellectual Property is subject to any outstanding order, ruling, decree, judgment or stipulation by or with any court, arbitrator, or administrative agency.

(vi) Due Registration, Etc. The Owned Intellectual Property has been duly registered with, filed in or issued by, as the case may be, the United State Patent and Trademark Office, United States Copyright Office or such other filing offices and Seller has taken such other actions, to ensure full protection under any Applicable laws or regulations, and such registrations, filings, issuances and other actions remain in full force and effect.

(vii) Use of Name and Mark. Except as set forth on Schedule 6(p)(vii) annexed hereto, there are and immediately after the Closing there will be, no contractual restrictions or limitations pursuant to any orders, decisions, injunctions, judgments, awards or decrees of any Governmental Authority on the Purchaser's right to use the name and mark "Metco Environmental" in the conduct of

Seller's business as presently carried on by Seller.

(q) Environmental Matters.

(i) Permits. All federal, state and local permits, licenses, registrations, consents, orders, administrative consent orders, certificates, approvals or other authorizations which reasonably may be deemed necessary for the conduct of Seller's business as currently conducted or previously conducted under any law relating to pollution or protection of the environment, human health and safety, or to any emission, discharge, generation, processing, storage, holding, abatement, existence, Release (as hereinafter defined), threatened Release or transportation of Hazardous Material (as hereinafter defined) (collectively, the "Environmental Permits") are identified on Schedule 6(q)(i) annexed hereto, and Seller currently holds, and at all times has held, all such Environmental Permits necessary to Seller, the absence of which may have a material adverse effect upon Seller. Seller has not been notified by any relevant Governmental Authority that any Environmental Permit will be modified, suspended, canceled or revoked, or cannot be renewed in the ordinary course of business or that Seller is a potentially responsible party under CERCLA (as hereinafter defined) or any other Environmental Laws (as hereinafter defined).

(ii) No Violations. Seller has complied and is in compliance in all material respects with all Environmental Permits and all applicable Environmental Laws pertaining to any real property owned or leased by Seller. No person has alleged any violation by Seller of any Environmental Permits or any Environmental Laws relating to Seller or such real property and for which Seller or the Shareholder has received service of process or notice of any nature.

(iii) Other. Except as set forth on Schedule 6(q)(iii) annexed hereto:



(A) None of current or past operations, or any by-product thereof, and none of the currently or formerly owned or operated property or assets of Seller, including, without limitation, Seller's Assets and the leased real property, are related to or subject to any investigation or evaluation by any Governmental Authority, with respect to which any action is required to (1) clean up, remove, treat or in any way rededicate any Hazardous Material; (2) prevent the Release or threatened Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or welfare, natural resources or the environment or (3) perform studies, investigations and care related to any such Hazardous Materials (collectively "Remedial Action") or to take any other action as may be needed or mandated to respond to a Release or threatened Release of any Hazardous Materials.

(B) Seller is not subject to any outstanding order, judgment, injunction, decree or writ from, or contractual or other obligation to or with, any Governmental Authority or other party in respect of which Purchaser may be required to incur any out-of-pocket expenses and reasonable attorneys' and accountants' fees (collectively, "Losses"), whether direct or indirect, known or unknown, current or potential, past, present or future, imposed by, under or pursuant to Environmental Laws, including, without limitation, all Losses related to any Remedial Action, and all fees, disbursements and expenses of counsel, experts, personnel and consultants based on, arising out of or otherwise in respect of: (1) the ownership or operation of Seller's business, leased real property or any other real properties, assets, equipment or facilities, by Seller or any predecessor of Seller or any Affiliate of Seller; (2) the environmental

conditions existing on the Closing Date on, under, above, or about any leased real property or any other real properties, assets, equipment or facilities currently or previously owned, leased or operated by Seller or any predecessor of Seller or any Affiliates of Seller; and (3) expenditures necessary to cause any leased real property or any other real properties or any aspect of Seller to be in compliance with any and all requirements of Environmental Laws as of the Closing Date including, without limitation, all Environmental Permits issued under or pursuant to such Environmental Laws (collectively "Environmental Liabilities") and Losses arising from the Release or threatened Release of a Hazardous Material.

(C) To the best actual knowledge of Seller and the Shareholder, none of the currently or formerly owned or operated real property used by Seller, including any leased real property, is, and Seller has not transported or arranged for the transportation (directly or indirectly) of any Hazardous Materials or such real property to any location that is listed or proposed for listing on the National Properties List or the CERCLA Information System under CERCLA, or any similar state, local or foreign list, or the subject of federal, state or local enforcement actions or investigations or any Remedial Action under any Environmental Laws.

(D) No work, repair, construction or capital expenditure is required or planned in respect of the Seller's Assets pursuant to or to comply with any Environmental Law, nor has Seller received any notice of any such requirement, except for such work, repair, construction or capital expenditure as is not material to Seller and is in the ordinary course of business.

(E) Seller has not caused or suffered to occur any Release of Hazardous Materials at, under, above or within any currently or formerly owned or operated real property used by Seller, including, without limitation, any leased real property.

(F) To the best actual knowledge of Seller and the Shareholder, no Hazardous Materials exist (i) upon or under any of the real property (owned, operated or leased by Seller) on the date hereof, or (ii) to the knowledge of Seller without independent investigation, upon or under any real property previously owned, operated or leased by Seller.

(iv) Definitions.

(A) As used in this Agreement, the term Environmental Law means:

(1) any federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing preservation, conservation or regulation of the environment, regulations and reauthorizations, pertaining to safety or the protection, preservation, conservation or regulation of the environment including but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Clean Water Act, 33 U.S.C. §1251 et seq.;

(2) any state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all reauthorizations, pertaining to safety or the protection, preservation, conservation or regulation of the environment.

(3) any federal, state or local legislation pertaining to safety or the protection, preservation, conservation or regulation of the environment and all related amendments, implementing regulations and reauthorizations.

(B) As used in this Agreement, the term Hazardous Materials means:

(1) "hazardous substances," as defined by CERCLA;

(2) "hazardous wastes," as defined by RCRA;

(3) any pollutant or contaminant, or hazardous, dangerous or toxic chemical, material, waste or substance ("pollutant") within the meaning of the Environmental Laws, which Environmental Laws prohibit, limit or otherwise regulate the use, exposure, release, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

(4) petroleum, crude oil or any fraction of petroleum or crude oil;

(5) any radioactive material, including any source, special

nuclear or by-product material, as defined at 42 U.S.C. §2011 et seq., and amendments thereto and reauthorizations thereof;

(6) asbestos-containing materials in any form or condition ("ACM"); and

(7) polychlorinated biphenyls ("PCB").

(C) Release shall mean the releasing, disposing, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, employing, seeping, disposal, migration, transporting, placing of the like, including, without limitation, the moving of any Hazardous Materials through, into or upon, any land, soil, surface water, or air, or otherwise enter into the environment.

(r) No Guaranties. None of the obligations or liabilities of Seller is directly or indirectly guaranteed by any other person, firm or corporation, nor has Seller directly or indirectly guaranteed the obligations or liabilities of any other person, firm or corporation. There are no outstanding letters of credit, surety bonds or similar instruments of Seller in connection with Seller's Assets.

(s) Receivables. Except as set forth on Schedule 6(s) annexed hereto, all accounts and trade receivables of Seller which are reflected on the Balance Sheet and which have arisen since the date thereof, have arisen only from bona fide transactions in the ordinary course of Seller's business and, net of reserves reflected on the Balance Sheet for uncollectible receivables, shall be (or have been) fully collected when due, or in the case of each account receivable, within ninety (90) days after it arose, without resort to litigation and without offset or counterclaim, in the aggregate face amounts thereof. None of Seller's accounts and trade receivables, or any rights with respect thereto, have been pledged, factored or otherwise transferred to any party or are otherwise encumbered in any way. Set forth on Schedule 6(s) annexed hereto are Seller's accounts and trade receivables (as of December 16, 1998 which schedule

will be updated by Seller no later than thirty (30) days from and after Closing to reflect Seller's accounts and trade receivable as of the Closing Date), together with detailed information as to each such listed receivable which has been outstanding for more than sixty (60) days.

(t) **Absence of Certain Business Practices.**

Except as set forth on Schedule 6(t) annexed hereto, neither Seller nor, to the best actual knowledge of Seller or the Shareholder, any officer, employee or agent of Seller, nor any other person acting on its behalf, has, directly or indirectly, given or agreed to give any gift or similar benefit, of a material nature to any customer, supplier, governmental employee or other person who is or may be in a position to help or hinder the business of Seller (or assist Seller in connection with any actual or proposed transaction) which (i) might subject Seller to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past, might have had an adverse effect on the assets, business or operations of Seller as reflected on the Financial Statements or (iii) if not continued in the future, might adversely affect the assets, business, operations or prospects or which might subject Seller to suit or penalty in any private or governmental litigation or proceeding.

(u) **Disclosure.** No representation or

warranty by Seller or the Shareholder contained in this Agreement or in any other document furnished or to be furnished by Seller or the Shareholder in connection herewith or pursuant hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make the statements herein or therein contained not misleading or necessary in order to provide a prospective purchaser of Seller's Assets with adequate information as to Seller and its condition (financial and otherwise), properties, assets, liabilities, business and prospects, and Seller and the Shareholder have disclosed to Purchaser in writing all material adverse facts known to them related to the same. The representations and warranties contained in this Section 6 shall not be affected or deemed waived by reason of the fact that Purchaser and/or its representatives knew or should have known that any such representation or warranty is or might be inaccurate in any respect.

(v) **Labor Disputes.** Seller is not a party to or bound by any collective bargaining agreement and there are no labor unions or other organizations representing, purporting to represent or attempting to represent any employees employed by Seller. With respect to the Seller's business (i) no work stoppage by employees of Seller has occurred and is continuing or is threatened, (ii) neither Seller nor the Shareholder has any actual knowledge of any pending or threatened charges against Seller of unfair labor practices or discrimination based on age, race or sex, (iii) there are no pending labor negotiations with or union organization efforts by any employees of Seller or with any union representing or attempting to represent any employees of Seller and there have been no such negotiations or organizing efforts in the past three (3) years and (iv) neither Seller nor the Shareholder has any knowledge of employee grievances which in the aggregate would be material and adverse to the business of Seller that have not been settled or otherwise resolved to the satisfaction of Seller and the employees.

(w) **Customers and Accounts.** Except as set forth on Schedule 6(w) annexed hereto, neither Seller nor the Shareholder has any knowledge or information that any person or entity whose payments to Seller, whether alone or together with any party actually known by Seller to be such person's Affiliate, accounted for 5% or more of the Seller's gross revenues in either of its fiscal years ending in 1996 or 1997 or in the eight (8) month period ending August 31, 1998 will cease or has ceased doing business with Seller or Purchaser as its successor, for any reason, or will or has reduced its revenues to Seller by more than twenty (20%) percent for any reason. Schedule 6(w) annexed hereto correctly lists the twenty (20) largest clients of Seller during each of the fiscal years ended in 1996 and 1997 and the eight (8) month period ending August 31, 1998, together with the amount of billings with respect thereto (calculated on a basis consistent with the Financial Statements), made by Seller to each such account during each such year or period. Each of the Clients of Seller set forth on Schedule 6(w) annexed hereto is a bona fide client of the Seller as of the Closing Date

(x) **Suppliers; Raw Materials.** Schedule 6(x) annexed hereto sets forth (i) the names and addresses of all suppliers from which Seller ordered raw materials, supplies, equipment, merchandise and

other goods and services with an aggregate purchase price for each supplier of \$10,000 or more during the eight (8) month period ended August 31, 1998 and (ii) the amount for which each supplier invoiced Seller during such period. Neither Seller nor the Shareholder has received any notice or have any reason to believe that there has been any material adverse change in the price of such raw materials, supplies, merchandise and other goods or services, or that any such supplier will not sell raw materials, supplies, merchandise and other goods or services to Purchaser at any time after the Closing on terms and conditions similar to those used in its current sales. To the best knowledge of Seller and the Shareholder, no supplier of Seller described in clause (i) of the first sentence of this Section 6(x) has otherwise threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement.

(y) **Unbilled Costs and Advance Billings.**

All costs incurred on jobs in process, whether reflected as unbilled costs or a reduction of advance billings to clients, reflected on Seller's books of account as of December 31, 1997 which schedule will be updated to reflect all costs incurred on jobs in process as of the Closing Date no later than thirty (30) days from and after the Closing (a true and correct schedule of which is listed in Schedule 6(y) annexed hereto) are realizable in the ordinary course of business and were calculated in accordance with generally accepted accounting principles and the percentage of completion method of accounting, applied on a basis consistent with the principles used in preparing the Financial Statements.

(z) **Contracts and Proposals.**

(i) Schedule 6(z) annexed hereto contains (A) a complete and correct list of all material agreements, contracts, licenses, commitments and other instruments and arrangements (whether written or oral) by which Seller is bound (collectively, "Contracts"), and (B) a list of all material outstanding proposals, or other writings prepared in an effort to obtain business, prepared by Seller, or on Seller's behalf, and forwarded to prospective clients or customers (the "Proposals").



(ii) Seller has provided Purchaser complete and correct copies of all written Contracts, together with all amendments thereto, including (A) an accurate descriptions of all material terms of all oral Contracts and (B) all Proposals, set forth or required to be set forth in Schedule 6(z) hereto.

(iii) All Contracts are in full force and effect and enforceable against each party thereto. There does not exist under any Contract any event of default or event or condition that, after notice or lapse of time or both, would constitute a violation, breach or event of default thereunder on the part of Seller or any other party thereto except as set forth in Schedule 6(z) annexed hereto and except for such events or conditions that, individually and in the aggregate, (A) has not had or resulted in, and will not have or result in a default or an event which, after notice or lapse of time, or both, would constitute a default or result in a right to accelerate a loss of right (a "Material Adverse Effect") and (B) has not and will not materially impair the ability of Seller to perform its obligations under this Agreement and under the Seller's Related Agreements. None of Seller's existing or completed Contracts is subject to renegotiation with any Governmental Authority. Except as set forth in Schedule 6(z), no consent of any third party is required under any Contract as a result of or in connection with, and the enforceability of any Contract will not be affected in any manner by, the execution, delivery and performance of this Agreement or any of the Seller's Related Agreements or the consummation of the transactions contemplated thereby.

(iv) Seller has no outstanding power of attorney in favor of any party relating to Seller.

(aa) Directors and Officers. Schedule 6(aa) annexed hereto contains a complete and accurate list of the names of all of Seller's directors and officers, the name of each bank in which Seller has an account or safe deposit box and the names of all

persons authorized to draw thereon or have access thereto.

(bb) **Inventories.** All inventory of equipment of Seller (collectively, "Inventories") are of good and usable quality, ordinary wear and tear excepted, in all material respects. Except as set forth on Schedule 6(bb) annexed hereto, (i) all Inventories are recorded on the books of Seller at the lower of cost or market value determined in accordance with generally accepted accounting principles consistently applied and (ii) no write-down in inventory has been made or should have been made pursuant to generally accepted accounting principles consistently applied during the past three (3) years. Schedule 6(bb) annexed hereto lists the locations of all Inventories.

(cc) **Real Property.**

(i) **Leases.** Schedule 6(cc) annexed hereto contains a complete and correct list of all real estate leases (the "Leases") pursuant to which Seller occupies or uses real property in connection with its business, setting forth the address, landlord and tenant for each Lease. Seller has delivered to the Purchaser correct and complete copies of the Leases. Each Lease is legal, valid, binding, enforceable, and in full force and effect, except as may be limited by bankruptcy, insolvency, reorganization and similar Applicable laws affecting creditors generally and by the availability of equitable remedies. Neither Seller nor to the best knowledge of Seller and the Shareholder, the landlord under any of the Leases is (or upon the consummation of the transactions contemplated hereby, will be) in default, violation or breach in any respect under any Lease, and no event has occurred and is continuing that constitutes or, with notice or the passage of time or both, would constitute a default, violation or breach in any respect under any Lease. None of the Leases have been pledged, mortgaged, assigned, modified or amended by Seller. Each Lease grants the tenant under the Lease the exclusive right to use and occupy the demised premises thereunder. Seller has good and valid title to the leasehold estate under

each Lease free and clear of all liens created by Seller. Seller enjoys peaceful and undisturbed possession under its respective Leases for the leased real property. Except as set forth on Schedule 6(cc) annexed hereto, no consent is required by any landlord, lessor, ground lessor, mortgagee, or other party holding any interest in connection with or in respect of any of the Leases, by virtue of the transactions contemplated hereby.

(ii) No Proceedings. Except as set forth on Schedule 6(cc) annexed hereto, there are no eminent domain or other similar proceedings pending or, to the knowledge of Seller and the Shareholder, threatened affecting any portion of the leased real property and there is no proceeding pending or, to the knowledge of Seller and the Shareholder, threatened for the taking or condemnation of any portion of the leased real property. There is no writ, injunction, decree, order or judgment outstanding, nor any action, claim, suit or proceeding, pending or threatened, relating to the lease, use, occupancies or operation by any person of any of the leased real property.

(iii) Current Use. To the best knowledge of Seller and the Shareholder, the use and operation of the real property in the conduct of Seller's business does not violate in any material respect any instrument of record or agreement affecting the real property. To the best knowledge of Seller and the Shareholder, there is no violation of any covenant, condition, restriction, easement or order of any Governmental Authority having jurisdiction over such property or of any other person entitled to enforce the same affecting the real property or the use or occupancy hereof. No damage or destruction has occurred with respect to any of the real property.

(dd) Brokers. Other than the Geneva Companies, there is no obligation to pay any commission, finder's fee, broker's fee or similar charge in connection with the transactions provided for

in this Agreement, resulting from any agreements or other action of the Seller or the Shareholder.

**7. Representations and Warranties by Purchaser.**

Purchaser represents and warrants to Seller and the Shareholder as follows:

(a) **Organization.** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to enter into this Agreement and all other agreements to which Purchaser is a party required to be delivered by Purchaser pursuant to Section 5(a) hereof (which documents are hereinafter sometimes collectively referred to as "Purchaser's Related Agreements") and to carry out the transactions contemplated by this Agreement. Purchaser has delivered to Seller copies of Purchaser's certificate of incorporation, and all amendments thereto, and the by-laws of Purchaser as presently in effect, each certified as true and correct by Purchaser's secretary.

(b) **Execution, Delivery and Performance of Agreement.** Neither the execution, delivery nor performance of this Agreement and Purchaser's Related Agreements by Purchaser will, with or without the giving of notice or the passage of time, or both conflict with, result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance pursuant to any provision of Purchaser's certificate of incorporation or by-laws or any franchise, mortgage, deed of trust, lease, license, agreement, understanding, law, ordinance, rule or regulation or any order, judgment or decree to which Purchaser is a party or by which it may be bound or affected. Purchaser has the full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, all proceedings required to be taken by Purchaser to authorize the execution, delivery and performance of this Agreement and Purchaser's Related Agreements have been properly taken, and this Agreement and Purchaser's Related Agreements constitute the valid and binding obligations of Purchaser, enforceable in accordance with their respective terms, except that such enforcement may be subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium and similar law affecting creditors' rights generally.

(c) **Litigation.** There is no claim, legal action, suit, arbitration, governmental investigation or other legal or administrative proceeding, nor any order, decree or judgment in progress, pending or in effect or, to Purchaser's knowledge, threatened against or relating to Purchaser in connection with or relating to the transactions contemplated by this Agreement and the Purchaser's Related Agreements and Purchaser does not know or have any reason to be aware of any basis for the same.

(d) **Brokers.** There is no obligation to pay any commission, finder's fee, broker's fee or similar charge in connection with the transactions provided for in this Agreement, resulting from any agreements or other action of Purchaser.

8. **Employment Matters; Employment Contracts.** (a) Except to the extent the following constitutes an Assumed Liability or is reflected as a liability on the Balance Sheet, Seller shall be responsible for, and shall discharge, all obligations with respect to currently existing salary, wages, bonuses, commissions and other compensation, group insurance claims, medical benefits reimbursable by Seller under existing medical reimbursement policies, severance and all other benefits accrued through the Closing Date to all employees of Seller and any such costs arising after the Closing Date under the terms of any of the foregoing attributable to employment prior to the Closing Date.

(b) Schedule 8(b) annexed hereto contains:

(i) an accurate and complete list and description of all collective bargaining agreements, employment and consulting agreements, executive compensation plans, bonus plans, deferred compensation agreements, employee stock options or stock purchase plans and group life, health and accident insurance and other employee benefit plans, agreements, arrangements or commitments, whether or not legally binding, including, without limitation, holiday, vacation, Christmas and other bonus practices, to which Seller is a party or is bound;

(ii) the names and current annual salary rates of all persons who are currently

employed by Seller showing separately for each such person the amount paid or payable as salary, bonus payments and any indirect compensation for the year ended December 31, 1997, and for the eight (8) month period ended August 31, 1998 as well as each of such person's current compensation;

(iii) all material written agreements providing for the services of an independent contractor to which Seller is a party or by which it is bound; and

(iv) true and correct copies (or summaries thereof) of all employee retirement plans, pension plans, welfare plans and all employee benefits covering Seller's employees (and any summary plan descriptions in effect for such plans and benefits). Except as set forth on Schedule 8(b) annexed hereto, all material requirements of Applicable law, including, without limitation, the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), have been fulfilled with regard to said plans and the administration thereof and will be fulfilled with regard to the termination of any of said plans.

(c) The execution and performance of this Agreement will not constitute a stated triggering event under any plan or arrangement which will result in a parachute or other payment (whether of deferred compensation, or otherwise) becoming due to any employee or former employee of Seller.

(d) There exist no obligations or liabilities, including claims incurred (as defined herein) but not reported under any uninsured plan providing medical benefits, arising out of or in connection with any employee benefit plan or arrangement, except to the extent funded or accrued as a liability. For purposes of the preceding sentence, a medical claim shall be deemed to be incurred on the date of occurrence of an injury, the diagnosis of an illness, or any other event giving rise to such claim or series of related claims. No plan provides health, medical, death or survivor benefits to any former employee of Seller or beneficiary thereof, except to the extent required under any state insurance law providing for a conversion option, COBRA or other COBRA

type rights under a group insurance policy or under Section 601 of ERISA. There are no multi-employer plans covering any employee of Seller nor has Seller ever maintained a multi-employer plan. With respect to any plan or trust created thereunder, no event has occurred which would subject Seller, directly or indirectly, by reason of an indemnity obligation or otherwise, to any tax imposed under Section 4975 of the Code or any civil penalty imposed under Section 502 of ERISA. There have not been any "reportable events" as such term is defined Section 4043(b) of ERISA with respect to any plan. Each of Seller's employee benefit plans has received a valid qualification letter from the Internal Revenue Service that each such plan is "qualified" within the meaning of Section 401(a) of the Code and that its trust is tax exempt under Section 501(a) of the Code. Each such plan has been maintained and administered as such and Seller knows of no fact which would adversely affect the qualified status of any such plan.

(e) There has not been any (i) termination of any "defined benefit plan" within the meaning of ERISA maintained by Seller or any person, firm, or corporation (each being referred to herein as an "ERISA Affiliate") which is under "common control" (within the meaning of Paragraph 4001(b) of ERISA) with Seller, except to the extent that such "defined benefit plan" was fully funded on the date of termination sufficient to pay all plan liabilities and no liability in respect thereof exists (or shall exist) to the Pension Benefit Guaranty Corporation, (ii) commencement of any proceeding to terminate any such plan pursuant to ERISA, or otherwise or (iii) written notice given to Seller or any ERISA Affiliate of the intention to commence or seek the commencement of any such proceeding.

(f) Except as otherwise provided below, Purchaser shall have the right, but not the obligation, from and after the date hereof, to offer employment on terms and conditions acceptable to Purchaser to personnel employed by Seller immediately prior to Closing, provided that all such employees other than the Shareholder shall, except as Purchaser or any such employee may otherwise agree, be offered employment on an "at will" basis for no specific period of time and Purchaser shall be under no obligation to employ any such persons, continue such employment or to provide any severance or other payment to any of such employees upon termination of the employment of any of such employees. Seller shall provide written notice to each

of its employees who shall not be offered employment by Purchaser on or promptly following Closing that his or her employment is being terminated by Seller immediately prior to Closing and Seller shall solely be responsible for any and all severance and other obligations due, if any, or desired by Seller to be paid to any such terminated employees.

(g) Nothing in this Agreement, whether express or implied, is intended to confer upon any employee or his legal representative any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement including, without limitation, any rights of employment.

(h) At the Closing, Purchaser shall execute and deliver the Mullins Employment Agreement.

(i) Each employee of Seller who is retained by Purchaser shall upon becoming an employee of Purchaser be entitled to participate in Purchaser's 401(k) plan as of January 1, 1999, and health and medical insurance plans, without any waiting period and without the need to satisfy any eligibility requirements which otherwise may be imposed upon a new employee of Purchaser, and such health and medical insurance plan shall provide coverage which is no less favorable than the coverage provided under the Seller's plan, as it existed prior to Closing.

(j) Each employee of Seller retained by Purchaser shall be eligible, in connection with his or her employment with Purchaser, for the vacation accrued by such employee for calendar year 1998 while employed by Seller. Such accrued vacation shall be a liability for purposes of the Closing Balance Sheet.

9. **Indemnification.** (a) Seller and the Shareholder, jointly and severally, hereby indemnify, defend and hold Purchaser harmless from, against and in respect of (and shall, subject to the other provisions of this Agreement, on demand reimburse Purchaser for):

(i) any and all loss, liability or damage suffered or incurred by Purchaser by reason of any untrue representation, breach of warranty or nonfulfillment of any covenant or agreement by Seller or the Shareholder contained herein or in any certificate, document or instrument delivered by Seller or



the Shareholder to Purchaser hereunder (except the Mullins Employment Agreement and the Non-Competition Undertakings, which shall be governed solely by the terms thereof):

(ii) any and all loss, liability or damage suffered or incurred by Purchaser in respect of or in connection with any liabilities of Seller, except for the Assumed Liabilities (including, without limitation, bulk sales, Taxes and liabilities relating to the Excluded Assets);

(iii) except as otherwise provided herein and except for the Assumed Liabilities, any and all debts, liabilities or obligations (including, without limitation, bulk sales, Taxes and environmental liability and costs and any other liabilities relating to excluded assets) of Seller or the Shareholder, direct or indirect, fixed, contingent or otherwise;

(iv) any and all debts, liabilities or obligations of in respect of the Seller or the Shareholder, direct or indirect, fixed, contingent or otherwise, arising in whole or in part out of any act, transaction, circumstance or state of facts which occurred or existed on or before the Closing Date, whether or not then known, due or payable; and

(v) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, reasonable legal fees, court costs and expenses, incident to (i), (ii), (iii) or (iv) above or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

(b) Purchaser shall indemnify, defend and hold Seller or the Shareholder harmless from, against and in respect of (and shall, subject to the other provisions of this Agreement, on demand reimburse them for):

(i) any and all loss, liability or damage suffered or incurred by Seller or the Shareholder by reason of or resulting from

any untrue representation, breach of warranty or non-fulfillment of any covenant or agreement by Purchaser contained herein or in any certificate, document or instrument delivered to Seller or the Shareholder hereunder;

(ii) any and all loss, liability or damage suffered or incurred by Seller or the Shareholder in respect of or in connection with Purchaser's failure to pay or perform any of the Assumed Liabilities; and

(iii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including without limitation, reasonable legal fees, court costs and expenses, incident to (i), (ii) or (iii) above or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

(iv) any and all debts, liabilities or obligations of in respect of Seller's Assets, direct or indirect, fixed, contingent or otherwise, arising out of any act, transaction, circumstance or state of facts which occurred after the Closing Date, whether or not then known, due or payable; and

(c) Seller and the Shareholder, on the one hand, and the Purchaser, on the other hand, shall not be required to indemnify the other under this Section 9 or be liable under Section 10 hereof unless the aggregate amounts for which indemnity would otherwise be due thereunder exceeds \$25,000 (the "Indemnification Basket"), in which case Seller and the Shareholder, on the one hand, or Purchaser, on the other hand, shall, as the case may be, be responsible for all such indemnifiable amounts from the first dollar. Notwithstanding the foregoing to the contrary, the Indemnification Basket shall not apply to a breach of a representation or warranty contained in Section 6(i) (taxes) hereof or Seller's obligations under Section 12 (Bulk Sales Compliance) hereof and, in any such event, Seller and the Shareholder shall indemnify Purchaser therefor from the first dollar.

(d) Any indemnifiable liability or reimbursement under this Section 9 shall be calculated net of any applicable insurance payments actually received, or other reimbursement or tax benefit actually realized by such party.

(e) If a claim by a third party is made against a party hereto (an "Indemnified Party"), and if an Indemnified Party intends to seek indemnity with respect thereto under this Section 9, the Indemnified Party shall promptly notify in writing the party required to indemnify the Indemnified Party pursuant to this Section 9 (an "Indemnifying Party") of such claim (the "Indemnity Notice"); provided, however, that failure by an Indemnified Party to notify an Indemnifying Party of such claim shall not effect the Indemnified Party's right to seek indemnification so long as the Indemnifying Party is not materially prejudiced by such failure to have been notified of such claim. The Indemnifying Party shall have ten (10) days after receipt of the Indemnity Notice to undertake, conduct and control, through counsel of its own choosing and at its expense, but reasonably acceptable to the Indemnified Party, the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith; provided, however, that with respect to settlements entered into by the Indemnifying Party, the Indemnifying Party shall obtain the release of the claiming party in favor of the Indemnified Party. If the Indemnifying Party undertakes, conducts and controls the settlement or defense of such claim, the Indemnifying Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by the Indemnified Party, providing that the fees and expenses of such counsel shall be borne by the Indemnified Party. With respect to indemnification provided for hereunder, the Indemnified Party shall not pay or settle any such claim so long as the Indemnifying Party is reasonably contesting any such claim in good faith. Notwithstanding the immediately preceding sentence, the Indemnified Party shall have the right to pay or settle any such claims, provided that in such event it shall waive any right to indemnity therefor by the Indemnifying Party.

(f) Subject to the limitations set forth in Sections 9(c)-(e), if the Indemnifying Party does not notify the Indemnified Party within fifteen (15) days after the receipt of the Indemnified Party's notice of a claim of indemnity hereunder that it elects to undertake the defense thereof, the Indemnified Party

shall have the right to contest, settle or compromise the claim in the exercise of its good faith reasonable judgment at the expense of the Indemnifying Party subject to the other terms and provisions of this Section 9.

(g) Notwithstanding, anything herein to the contrary, the maximum aggregate liability of Seller and the Shareholders pursuant to Section 9(a) hereof shall be limited to the Purchase Price (as adjusted in accordance with the terms and conditions of this Agreement).

(h) In the event that Purchaser receives an indemnification payment from Seller or the Shareholder in respect of an account receivable which has not been collected by Purchaser in accordance with Section 6(s) hereof, upon receiving such indemnity payment such account receivable shall automatically be deemed to have been assigned to Seller by Purchaser hereunder.

**10. Nature and Survival of Representations and Warranties; Rules Regarding Indemnification and Other Actions.**

(a) All statements, representations, warranties and indemnities made by each of the parties hereto (and in any schedule or exhibit annexed hereto) are and shall be true and correct as of the date hereof and as of the Closing Date, and each of them shall survive the Closing as provided in Section 10(b) hereof and shall be subject to Section 9 hereof. The obligations of Seller and the Shareholder hereunder shall be joint and several.

(b) No claim shall be made or enforced against an Indemnifying Party, whether pursuant to Section 9 hereof or by an action at law or any other action including, but not limited to, a claim of a breach of a representation and warranty (collectively, "Other Action") unless and to the extent that the Indemnity Notice or notice of an Other Action shall have been given by the party seeking indemnification or instituting an Other Action to the Indemnifying Party not later than 36 months after the Closing Date or (i) with respect to Taxes, the date upon which the applicable period of limitation on assessment or refund of any relevant tax has expired; (ii) sixty (60) months with respect to the representations and warranties

contained in Section 6(m); and (iii) indefinitely with respect to the representation and warranties contained in Section 6(q) hereof; provided that claims asserted pursuant to an Indemnity Notice prior to the expiration of the applicable survival period shall survive until such claim shall be resolved and payment in respect thereof, if any is owing, shall be made.

11. **Access to Information and Documents.** Seller will retain all books and records relating to Seller's business for seven (7) years (the "Retention Period"). During the Retention Period, Seller shall not dispose of or permit the disposal of any such books and records without first giving sixty (60) days' prior written notice to Purchaser offering to surrender the same to Purchaser at Purchaser's expense. Seller agrees to cooperate with Purchaser and shall furnish or make available to Purchaser such books and records and any and all other assistance as Purchaser may reasonably request relating to any matter relating to Taxes or any governmental inquiry or investigation during the Retention Period.

12. **Bulk Sales Compliance.** Purchaser hereby waives compliance by Seller with the provisions of any applicable bulk sales statutes of any state, and Seller warrants and agrees to pay and discharge when due all claims of creditors which could be asserted against Purchaser by reason of such non-compliance to the extent that such liabilities are not specifically assumed by Purchaser under this Agreement. Seller and the Shareholder, jointly and severally, hereby indemnify and agree to hold Purchaser harmless from, against in respect of and shall on demand reimburse Purchaser for any loss, liability cost or expense, including, without limitation, attorneys' fees, suffered or incurred by Purchaser by reason of the failure of Seller to pay or discharge such claims.

13. **Financial Statements; Closing Date Balance Sheet.** (a) Within ninety (90) days after the Closing Date, Seller shall prepare, and deliver to Purchaser, the Balance Sheet of Seller as at the Closing Date (the "Closing Balance Sheet"). The Closing Balance Sheet shall be utilized to determine the adjustments to the Purchase Price, if any, to be made in accordance with Section 2(b) hereof.

(b) The Closing Balance Sheet shall be prepared at the expense of Seller by Seller, and prepared by reference to the percentage of completion

method of accounting in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein, and shall be a complete, accurate and fair presentation of the financial condition of Seller as of the dates thereof. Purchaser shall provide full access to Seller and otherwise fully cooperate with Seller in connection with their preparation of the Closing Balance Sheet

(c) After receipt of the Closing Balance Sheet, as the case may be, Seller and Purchaser shall have twenty (20) days to object in writing to any or all of the amounts presented therein and/or, the calculation of any adjustment to the Purchase Price.

(i) If neither Seller nor Purchaser does so object, the Closing Balance Sheet and any adjustment to the Purchase Price as originally prepared and determined under Sections 13(a) and (b) hereof shall become final and binding on the parties.

(ii) If either Seller or Purchaser does so object to any portion of the Closing Balance Sheet or the calculation of any adjustment to the Purchase Price, then Purchaser and Seller must promptly attempt to resolve the differences by having their respective accounting firms meet. In the event the dispute is not resolved within thirty (30) days of either party's written objection, the parties agree to promptly subject the matter to binding arbitration in accordance with Section 15(1) hereof.

**14. Notices.** Any and all notices, demands or requests required or permitted to be given under this Agreement shall be given in writing and sent, by registered or certified U.S. mail, return receipt requested, by hand, or by overnight courier, addressed to the parties hereto at their addresses set forth above or such other addresses as they may from time-to-time designate by written notice, given in accordance with the terms of this Section, together with copies thereof as follows:

In the case of Purchaser, with a copy to:

Zukerman Gore & Brandeis, LLP  
900 Third Avenue  
New York, New York 10022-4728  
Facsimile no.: (212) 223-6433

Attention: Clifford A. Brandeis, Esq.

In the case of Seller or the Shareholder,  
with a copy to:

Richard Hamilton, Esq.  
800 E. Campbell Road  
Suite 154  
Richardson, TX 75081  
Phone No: (972) 690-8966  
Facsimile No: (972) 907-9531

(In addition, without constituting notice hereunder, the parties shall use reasonable efforts to send by facsimile to counsel for the party to whom notice is to be sent copies of all notices sent by such party) Notice given as provided in this Section shall be deemed effective: (i) on the date hand delivered, (ii) on the first business day following the sending thereof by overnight courier, and (iii) on the third calendar day (or, if it is not a business day, then the next succeeding business day thereafter) after the depositing thereof into the exclusive custody of the U.S. Postal Service by registered mail.

15. Miscellaneous. (a) This Agreement, including, without limitation, the schedules and other documents referred to herein, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements or understandings with respect hereto, and may not be modified or amended except by a written agreement specifically referring to this Agreement signed by all of the parties hereto.

(b) No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(c) This Agreement shall be binding upon and inure to the benefit of each corporate party hereto, its successors and assigns, and each individual party hereto and his heirs, personal representatives, successors and assigns.

(d) The section headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said sections.

(e) Each party hereto shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Agreement.

(f) Except as otherwise provided herein or in agreements delivered in connection with this Agreement, all legal, accounting and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party or parties incurring the same.

(g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

(h) This Agreement and all amendments hereto shall be governed by, construed and enforced in accordance with the internal laws of the State of Texas without reference to principles of conflict of laws. The parties hereto hereby irrevocably consent to the exclusive jurisdiction of all Federal and State courts in Dallas County, Texas in connection with any other proceedings brought by Seller, Purchaser, the Shareholder or their respective heirs, personal representatives, successors or assigns, in connection with this Agreement.

(i) If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision, only to the extent it is invalid or unenforceable, and shall not in any manner affect or render invalid or unenforceable any other severable provision of this Agreement, and this Agreement shall be carried out as if any such invalid or unenforceable provision were not contained herein.



(j) All schedules attached hereto shall be incorporated by reference herein as if set forth herein in full.

(k) Seller and the Shareholder agree that, without the prior written consent of Purchaser, unless otherwise required by law, none of such parties shall make or permit to be made any announcement of any kind about this Agreement or the transactions contemplated hereby at any time hereafter in the event the transactions contemplated hereby are not consummated as provided herein.

(l) Any dispute arising pursuant to Section 2 (c) (vii) (B) hereof or Section 13(c) (ii) hereof shall be resolved by arbitration in the manner provided in this Section 15(1). Such disputes shall be resolved by binding arbitration commenced and conducted in accordance with the then applicable rules of commercial arbitration of the American Arbitration Association in an arbitration commenced and held before a single arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The location of the arbitration shall be in Dallas County, Texas.


(m) This Agreement is not intended to, and shall not confer any rights upon, any parties other than the express parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**TESTAMERICA INCORPORATED.**

By:   
Name: Thomas R. Barr  
Title: President

**MULLINS ENVIRONMENTAL TESTING CO., INC.**

By:   
Name: Billy J. Mullins, Jr.  
Title: President

  
BILLY J. MULLINS, JR.

  
SANDRA H. MULLINS

SCHEDULE B

426-9

#7454/v1

TRADEMARK  
REEL: 1850 FRAME: 0067

## ASSIGNMENT OF INTELLECTUAL PROPERTY

Assignment of Intellectual Property (this "Assignment of Intellectual Property") made the 18<sup>th</sup> day of December, 1998, by **MULLINS ENVIRONMENTAL TESTING CO., INC.**, a Texas corporation having its principal office at 16115 Dooley Road, Dallas, Texas 75244 (hereinafter referred to as "Assignor") in favor of **TESTAMERICA INCORPORATED**, a Delaware corporation and the successor-in-interest to HydroLogic, Inc., having its principal office at 122 Lyman Street, Asheville, North Carolina 28801 ("Assignee").

In consideration of ten dollars (\$10.00) and the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under that certain Intellectual Property set forth on Schedule A attached hereto and made a part hereof. The term Intellectual Property as used in this Assignment of Intellectual Property shall have the same meaning as set forth in the Purchase Agreement (as hereinafter defined).

2. This Assignment of Intellectual Property is delivered pursuant and subject to and in accordance with the terms and conditions of that certain Agreement of Purchase and Sale of Assets, dated December 16, 1998, by and between Assignor, Assignee and Billy J. Mullins, Jr. and Sandra H. Mullins (the "Purchase Agreement").

3. This Assignment of Intellectual Property shall be binding on Assignor, Assignee and their respective successors and assigns.

4. This Assignment of Intellectual Property shall be governed by and construed in accordance with the laws of the State of Texas, without reference to the principles of conflict of law.

5. This Assignment of Intellectual Property may not be modified or amended in any manner other than by a written agreement signed by both parties hereto.

IN WITNESS WHEREOF, each party hereto has caused this Assignment of Intellectual Property to be executed by a duly authorized representative, on the day and year first above written.

MULLINS ENVIRONMENTAL  
TESTING CO., INC.

By: Billy J. Mullins, Jr.  
Billy J. Mullins, Jr.

**SCHEDULE A**

7415/v1

**TRADEMARK**  
**REEL: 1850 FRAME: 0070**

TM

1712557



Nº 1712557

**CERTIFICATE OF REGISTRATION**

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

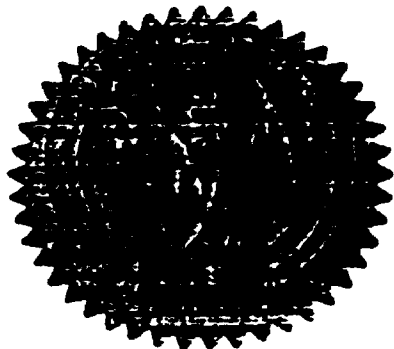
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

**PRINCIPAL REGISTER**

to the registrant named herein.

This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this first day of September 1992.

Acting Commissioner of Patents and Trademarks

Int. Cl.: 42

Prior U.S. Cl.: 100

**United States Patent and Trademark Office**

**Reg. No. 1,712,557**

**Registered Sep. 1, 1992**

**SERVICE MARK  
PRINCIPAL REGISTER**

**METCO ENVIRONMENTAL**

**MULLINS ENVIRONMENTAL TESTING CO.,  
INC. (TEXAS CORPORATION)  
16115 DOOLEY ROAD  
DALLAS, TX 75244**

**CONTROL, RESEARCH, TESTING, ANALYSIS,  
AND REPORTING, IN CLASS 42 (U.S. CL. 100)  
FIRST USE 10-0-1980; IN COMMERCE  
10-0-1980.**

**FOR: CONSULTING SERVICES IN THE  
NATURE OF ENVIRONMENTAL POLLUTION**

**SER. NO. 74-229,602, FILED 12-9-1991.**

**JILL C. ALT, EXAMINING ATTORNEY**

**TRADEMARK  
REEL: 1850 FRAME: 0072**



# The United States of America



Nº 1712375

## CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

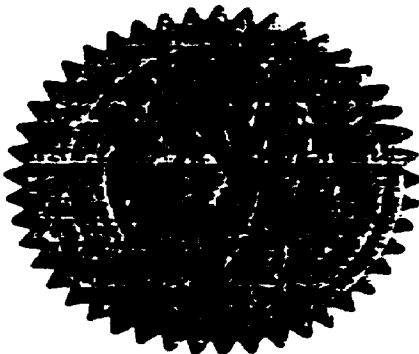
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

## PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this first day of September 1992.

Acting Commissioner of Patents and Trademarks

TRADEMARK  
REEL: 1850 FRAME: 0073

Int. Cl.: 41



Prior U.S. Cl.: 107

**United States Patent and Trademark Office**

**Reg. No. 1,712,375**

**Registered Sep. 1, 1992**

**SERVICE MARK  
PRINCIPAL REGISTER**

**METCO ENVIRONMENTAL**

MULLINS ENVIRONMENTAL TESTING CO.,  
INC. (TEXAS CORPORATION)  
16115 DOOLEY ROAD  
DALLAS, TX 75244

SEARCH, TESTING, ANALYSIS AND REPORT-  
ING, IN CLASS 41 (U.S. CL. 107).

FIRST USE 10-0-1980; IN COMMERCE  
10-0-1980.

FOR: EDUCATIONAL SERVICES IN THE  
NATURE OF CONDUCTING CLASSES, SEMI-  
NARS AND TRAINING SESSIONS FOR ENVI-  
RONMENTAL POLLUTION CONTROL RE-

SER. NO. 74-229,601, FILED 12-9-1991.

JILL C ALT, EXAMINING ATTORNEY

**TRADEMARK  
REEL: 1850 FRAME: 0074**

SCHEDULE C

126-9

#7454/v1

**TRADEMARK**  
**REEL: 1850 FRAME: 0075**

**ASSIGNMENT AND  
ASSUMPTION OF PERSONAL PROPERTY LEASES**

Assignment and Assumption of Personal Property Leases (this "Assignment and Assumption of Personal Property Leases") made the 15<sup>th</sup> day of December, 1998, by **MULLINS ENVIRONMENTAL TESTING CO., INC.**, a Texas corporation having its principal office at 16115 Dooley Road, Dallas, Texas 75244 ("Assignor") in favor of **TESTAMERICA INCORPORATED**, a Delaware corporation and the successor-in-interest to HydroLogic, Inc., having its principal office at 122 Lyman Street, Asheville, North Carolina 28801 ("Assignee").

In consideration of ten dollars (\$10.00) and the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under those certain personal property leases set forth on Schedule A attached hereto and made a part hereof (collectively defined hereinafter as the "Leases") including without limitation, the security or other deposits, if any, thereunder.

2. Assignee hereby acknowledges and assumes any and all obligations, responsibilities and liabilities of Assignor under the Leases arising from and after the date hereof, and agrees to perform all of the terms, covenants and conditions on the part of the Assignor to be kept, performed or observed under the Leases, from and after the date hereof.

3. This Assignment and Assumption of Personal Property Leases is delivered pursuant and subject to and in accordance with the terms and conditions of that certain Agreement of Purchase and Sale of Assets, dated September , 1998, by and between Assignor, Assignee, Billy J. Mullins, Jr. and Sandra H. Mullins.

4. This Assignment and Assumption of Personal Property Leases shall be binding on Assignor, Assignee and their respective successors and assigns.

5. This Assignment and Assumption of Personal Property Leases shall be governed by and construed in accordance with the laws of the State of Texas, without reference to the principles of conflict of law.

6. This Assignment and Assumption of Personal Property Leases may not be modified or amended in any manner other than by a written agreement signed by both parties hereto.

**IN WITNESS WHEREOF**, each party hereto has caused this Assignment and Assumption of Personal Property Leases to be executed by a duly authorized representative, on the day and year first above written.

**MULLINS ENVIRONMENTAL  
TESTING CO., INC.**

By: *Billy J. Mullins, Jr.*  
Billy J. Mullins, Jr.

## **SCHEDULE A**

1. Pitney Bowes postage meter

SCHEDULE D

426-9

#7454/v1

**TRADEMARK**  
**REEL: 1850 FRAME: 0079**

THE STATE OF TEXAS \*  
\*  
COUNTY OF DALLAS \*

**LEASE AGREEMENT**

This Lease Agreement ("Lease") made and entered into by and between BILLY J. MULLINS, JR., an individual having an address at 17102 Club Hill Drive, Dallas, Texas 75248 ("Landlord"), and TESTAMERICA, INC., a Delaware corporation having an address at 122 Lyman Street, Asheville, North Carolina 28801 ("Tenant"), is to witness the following:

**WITNESSETH:**

Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord the premises ("Demised Premises") lying and being situated within the County of Dallas and State of Texas and being part of the real property more commonly known as 16115 Dooley Road, Addison, Texas 75001, all as more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "Property" or the "Building"); together with all and singular the rights, privileges, easements and appurtenances belonging to or in any way pertaining thereto, including any right, title and interest of the Landlord in and to adjacent streets, alleys or right of ways, such real estate, rights and appurtenances referred to the Demised Premises and together with the building and other improvements now situated or to be erected upon the Demised Premises.

TO HAVE AND TO HOLD the same for a term of one (1) year beginning on the 18th day of December, 1998 (the "Commencement Date"), and ending on the 17th day of December, 1999 (the "Termination Date"), upon the following terms, conditions, and covenants:

1. Rent. Tenant agrees to pay rent for the Demised Premises to Landlord, without offset or deduction, except as otherwise set forth herein, at the rate of \$65,000.00 per year; provided, however, that such rental payment shall be divided into equal monthly payments of \$5,416.66 throughout the term hereof. Such monthly payments of rent shall be payable in



advance. One such monthly installment shall be due and payable on the Commencement Date of this Lease, and a like monthly installment shall be due and payable on or before the first day of each succeeding calendar month during the term hereof; provided that, in the event the term hereof shall commence or end during a calendar month, the rent for any fractional calendar month following the commencement or preceding the end of the term of this Lease shall be prorated by days.

In the event any rental payment is not received within ten (10) days after its due date for any reason whatsoever, then in addition to the past due amount Tenant shall pay, at Landlord's option, a late charge in an amount equal to four percent (4%) of the rental then due, in order to compensate Landlord for its administrative and other overhead expenses. Any such late charge shall be payable as additional rental under this Lease and shall be payable immediately on demand by Landlord. This Lease may be referred to as a triple net lease. In addition to the basic rental, Tenant agrees to pay all taxes (Section 5), maintenance (Section 6), alterational improvements (Section 7), utilities (Section 8) and insurance (Section 9) as prorated by days relative to the Commencement Date.

2. Acceptance of Premises. Tenant acknowledges that it has fully inspected the Demised Premises and accepts the Demised Premises, and any buildings and improvements situated thereon, as suitable for the purposes for which the same are leased in their present condition. Landlord shall deliver the Building and the Demised Premises to Tenant with all building systems, structures and utility hook-ups therein in good working order and in compliance with all laws, building codes and local regulations.

3. Use of Premises. The Demised Premises shall be used and occupied only for the purpose of operating environmental testing, general and executive offices and not otherwise. Tenant shall at its own expense obtain any and all governmental licenses and permits necessary for such use. Tenant shall at all times carefully supervise the use of the Demised Premises. Tenant shall not commit, nor allow to be committed, any waste or nuisance upon the Demised Premises, or any other act or occurrence that may disturb the quiet enjoyment of any owner or occupier of property in proximity to the Demised Premises. Tenant shall not keep, or allow any other party to keep, on the Demised Premises any article which might suspend, jeopardize or invalidate any fire or any other insurance on the Demised Premises or on property in proximity to the Demised Premises. Landlord represents and warrants that (i) the current zoning and land use classification for the Demised Premises will accommodate the permitted use of the Demised Premises set forth in this Lease (ii) Tenant's use is not in violation of the Certificate of Occupancy for the Building, a copy of which is attached as Exhibit B, (iii) Landlord owns fee simple title to the Demised Premises, and (iv) Landlord has no actual knowledge of any defects of the structure of the Building, Demised Premises or any of the systems contained in either.

4. Compliance with Law. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the manner of use of the Demised Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the Demised Premises, all at Tenant's sole expense.

Landlord shall not be responsible for the installation and maintenance of ramps, handrails, restroom fixtures, and elevator controls that can be used by wheelchair bound persons, and any other equipment, fixtures, or improvements necessary to make the Demised Premises reasonably accessible to and reasonably safe for use by wheelchair bound persons unless the same is necessary to comply with local, state, or federal law. Tenant shall not cause or permit to occur (i) any violation of any federal, state or local law, ordinance or regulation now or hereafter enacted, related to environmental conditions on, under or about the Demised Premises, or arising from Tenant's use or occupancy of the Demised Premises; or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance other than in the ordinary course of business as done by the previous lessee. The term "Hazardous Substance", as used herein, shall include, without limitation, flammables, explosives, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation, now or hereafter enacted or promulgated by any governmental authority. Tenant shall indemnify, defend, and hold harmless Landlord and Landlord's officers, directors, beneficiaries, agents and employees from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including reasonable attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge or other release of a Hazardous Substance that occurs during the Lease term at or from the Demised Premises, or which arise at any time from Tenant's use or occupancy of the Demised Premises. Landlord shall indemnify, defend, and hold harmless Tenant and Tenant's officers, directors, beneficiaries, agents and employees from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including reasonable attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge or other release of a Hazardous Substance that occurred prior to the Lease term at or from the Demised Premises. Tenant's obligations and liabilities hereunder shall survive the expiration of this Lease. Notwithstanding anything contained herein to the contrary, any alterations required to be made to the Demised Premises not resulting directly from Tenant's manner of use of the Demised Premises shall be made by Landlord promptly at its sole cost and expense without reimbursement or pass through to Tenant.

5. Taxes. During the Lease term, Tenant shall pay all taxes, general and special assessments and other charges levied on or imposed on the Demised Premises and on any of its personal property situated in, on, or about the Demised Premises. Provided Landlord forwards such invoices to Tenant within thirty (30) days prior to the date upon which the invoice is due, Tenant agrees to and shall pay all such foregoing property taxes, assessments and charges not less than fifteen (15) days prior to the date of delinquency thereof and give a copy of each such payment to Landlord within five (5) days after such payment is made. If Tenant fails to pay such taxes, assessments or charges, or fails to give written notice of any payment thereof as herein provided and the same becomes delinquent, Landlord may, at its option, following written notice to Tenant and its failure to cure such nonpayment within ten (10) days thereafter, pay such taxes, assessments, or charges, together with all penalties and interest which may have been added thereto because of Tenant's delinquency or default, and may likewise redeem the Demised Premises, or

any part thereof, from any tax sale or sales. Any such amounts so paid by Landlord shall become immediately due and payable as rent by Tenant to Landlord, together with interest thereon at the highest lawful rate from the date of payment by Landlord until paid by Tenant. Any such payment by Landlord shall not be deemed to be a waiver of any other rights which Landlord may have under the provisions of this Lease or as provided by law. Landlord will provide supporting taxing records and other documents pertinent for verification by Tenant. Tenant agrees to and shall protect and hold harmless Landlord and the Demised Premises from liability for any and all such taxes, assessments, and charges together with any interest, penalties, or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof. Taxes shall not, for purposes of this Lease, be deemed to include income, franchise taxes, gift taxes, capital stock taxes, inheritance taxes or estate taxes.

6. Maintenance. Except as otherwise set forth herein, Tenant shall maintain in good repair and condition, at its expense and risk, all of the Demised Premises. Should Tenant fail to make any repairs within fourteen (14) days of receipt of written notice from Landlord, then Landlord may, at its option, make the same and all reasonable costs and expenses incurred by Landlord in connection with said repairs shall become immediately due and payable by Tenant to Landlord as additional rental. The obligations of Tenant to make any other or additional or future repairs shall not be affected thereby. Tenant shall throughout the Lease term, take good care of the Demised Premises and keep them free from waste or nuisance and at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition, with all equipment situated in the Demised Premises on the Commencement Date of this Lease, or replacements thereof, in working order (reasonable wear and tear and damage by fire, tornado or other casualty excepted). In the event Tenant shall fail to maintain the Demised Premises in accordance with this section, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefor expended by Landlord shall be reimbursed by Tenant on demand, together with interest thereon at the highest rate from the date of payment by Landlord until paid by Tenant. Landlord shall, at its sole cost and expense, operate, repair and maintain all structural components of the Building (including, without limitation, the roof), and all parking lots and sidewalks. This is a triple net lease and all other maintenance and repair expenses shall be borne by Tenant.

7. Alterations, Additions and Improvements. Tenant shall not create any opening in the roof or exterior walls, or make any alterations, additions or improvements to the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld, conditioned or delayed by Landlord. Tenant shall have the right to erect or install shelves, bins, machinery, x-ray and laboratory equipment, examining tables and trade fixtures, provided the Tenant complies with all applicable governmental laws, ordinances and regulations. At the expiration or termination of this Lease, Tenant shall have the right to remove such items so installed, provided Tenant is not in default beyond notice and the expiration of any applicable grace period at the time of such removal and provided further that Tenant shall, at the time of removal of such items, repair in a good and workmanlike manner any

damage caused by installation or removal thereof. Tenant shall pay for all costs incurred or arising out of alterations, additions or improvements in or to the Demised Premises and shall not permit a mechanic's or materialman's lien to be asserted against the Demised Premises. Upon request by Landlord, Tenant shall deliver to Landlord proof of payment reasonably satisfactory to Landlord of all costs incurred or arising out of any such alterations, additions or improvements. All alterations, additions or improvements in or to the Demised Premises not, at Tenant's option, removed from the Demised Premises shall become the property of Landlord at the expiration or termination of this Lease.

8. Utility Services. Tenant shall pay the cost of all utility services, including but not limited to the telephone and all interior lamplights. Without limitation, Tenant shall be responsible for: (i) hot and cold potable water to all lavatories and kitchen areas and cold potable water to all water fountains within the Demised Premises; (ii) electricity to the Demised Premises; and (iii) heating, ventilation and air-conditioning ("HVAC Services") to the Building and the Demised Premises.

9. Insurance.

a. Tenant shall obtain fire and extended coverage insurance on the building during the entire term of this Lease, including any and all extensions or renewals, from such sources, in such form and in such amounts equal to the full replacement value, as Landlord shall deem reasonably necessary or appropriate.

b. Tenant shall procure and maintain in force during the entire term of this Lease or any extensions or renewal hereof, public liability insurance in the minimum amount of One Million and No/100 Dollars (\$1,000,000.00) for loss from an accident resulting in bodily injury to or death of one person, and One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) for loss from an accident resulting in damage to or destruction of property. Such public liability coverage must expressly include coverage for all injuries and damages arising from Tenant's use of the Demised Premises.

c. Tenant shall procure and maintain at its expense in force during the entire term of this Lease or any extensions or renewals hereof, worker's compensation insurance in an amount equal to the statutory ceiling for such coverage.

d. Tenant shall procure and maintain at its expense standard fire and casualty insurance on all of its personal property, including removable trade fixtures, located in the Demised Premises and on its leasehold improvements, and all other additions and improvements (including fixtures) made by Tenant and not required to be insured by Landlord above. Tenant understands that Landlord will not carry insurance of any kind on Tenant's furniture and furnishings or on any fixtures or equipment removable by Tenant under the provisions of this Lease, and that Landlord shall not be obligated to repair any damage thereto or to replace the same. Landlord shall not be required to repair any injury

or damage by fire or other cause, or to make any repairs or replacements of, improvements installed in the Demised Premises by or for Tenant.

On securing the foregoing coverages, the parties shall each give the other written notice thereof, together with a true and correct copy of the appropriate policies. Proof must also be given by each party to the other, that each of the policies provided for in this paragraph expressly provides that the policy shall not be canceled or altered without ten (10) days' prior written notice to the other party.

10. Waiver of Subrogation. Each party hereto waives any and every claim which arises or may arise in its favor against the other party hereto during the term of this Lease or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Demised Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

11. Signs. Any signs installed by Tenant shall conform with applicable laws and deed and other applicable restrictions. Tenant shall remove all signs at the termination of this Lease and shall repair any damage and close any holes caused or revealed by such removal.

12. Landlord's Right of Entry. So long as Landlord is an employee of Tenant, Landlord shall have the right to enter the Demised Premises at any time to perform his duties as an employee. Landlord and/or its authorized agents shall have the right, during normal business hours, upon prior reasonable notice, to enter the Demised Premises (a) to inspect the general condition and state of repair thereof, (b) to make repairs required or permitted under this Lease, (c) to show the Demised Premises to any prospective tenant or purchaser, or (d) for any other reasonable purpose. During the final sixty (60) days of the Lease term, Landlord and its authorized agents shall have the right to erect and maintain on or about the Demised Premises customary signs advertising the property for lease or for sale and shall have the right to market the Demised Premises for lease or sale by published advertisement. Landlord shall exercise due diligence to prosecute to completion any repairs which it is obligated or permitted to make pursuant to this Lease and when performing such repairs shall do so (i) in a good and workmanlike manner in accordance with all applicable laws and (ii) Landlord shall use its best efforts to minimize interference with the operation of Tenant's business.

13. Assignment and Subleasing. Tenant shall not, without the prior written consent of Landlord, which shall not unreasonably be withheld, conditioned or delayed, assign this Lease or sublet the Demised Premises or any portion thereof. Any attempted assignment or sublease in violation of the terms and conditions of this section shall be void and shall constitute an event of default under this Lease. Any permitted assignment or subletting shall be expressly subject to all terms and provisions of this Lease, including the provision of Section 3 pertaining to the use of the Demised Premises. In the event of any assignment or subletting, Tenant shall remain fully liable for the full performance of all Tenant's obligations under this Lease. Tenant shall not assign his rights hereunder or sublet the premises without first obtaining a written agreement from assignee or sublessee whereby assignee or sublessee agrees to be bound by the terms of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default beyond notice and the expiration of the applicable grace period while the Demised Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the performance of its obligations hereunder. Notwithstanding anything to the contrary contained herein, Tenant shall have the right without obtaining Landlord's consent, but upon notice to Landlord, to assign this Lease or sublease all or any portion of the Demised Premises to its parent, subsidiary, affiliates or any other entity (x) into which (i) it merges with (or into) or (ii) combines or consolidates with or (y) that acquires (directly or indirectly) all or substantially all of its assets or stock.

14. Fire and Casualty Damage.

a. If the building or other improvements on the Demised Premises should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to Landlord.

b. If the building situated on the Demised Premises should be substantially or totally destroyed by fire, tornado or other casualty, or so damaged that rebuilding or repairs cannot reasonably be completed within forty-five (45) days from the date of written notification by Tenant to Landlord of the happening of the damage (which Tenant shall be advised of within thirty (30) days following delivery of its written notice to Landlord of such casualty), this Lease shall terminate at the option of Landlord or Tenant and rent shall be abated for the unexpired portion of this Lease, effective from the date of such damage. If this Lease is not terminated, the building and other improvements shall be rebuilt or repaired and rent abated to the extent provided under Section 14c.

c. If the building or other improvements situated on the Demised Premises should be damaged by fire, tornado or other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within forty-five (45) days from the date of written notification by Tenant to Landlord of the happening of the damage (which

Tenant shall be advised of within thirty (30) days following delivery of its written notice to Landlord of such casualty), this Lease shall not terminate, but Landlord shall, at its sole cost and risk, proceed forthwith and use reasonable diligence to rebuild or repair such building and other improvements on the Demised Premises (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Demised Premises) to substantially the condition in which they existed prior to such damage; provided, however, if the casualty occurs during the final six (6) months of the Lease term, Landlord shall not be required to rebuild or repair such damage and this Lease shall terminate at the option of Landlord or Tenant and rent shall be abated for the unexpired portion of this Lease, effective from the date of such damage. If the building and other improvements are to be rebuilt or repaired and are untenable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenable shall be adjusted equitably. Tenant agrees that promptly after completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to rebuild, repair and restore its signs, fixtures and equipment contained in the Demised Premises.

15. **Indemnity.** Except if resulting from Landlord's negligence or willful misconduct, Landlord shall not be liable to Tenant or to Tenant's employees, agents, invitees, guests, visitors, or to any other person whomsoever, for any injury to persons or damage to property, whether or not such damage or injury occurred on or about the Demised Premises, caused by the negligence or misconduct (whether or not such negligence or misconduct is determined to be sole negligence, comparative negligence, concurrent negligence, gross negligence or willful negligence) of Tenant, its employees, subtenants, licensees, concessionaires, invitees, guests or any other person entering the Demised Premises under express or implied invitation of Tenant, or arising out of the use of the Demised Premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations hereunder; and Tenant hereby agrees to indemnify Landlord and hold it harmless from any loss, expense or claims arising out of such damage or injury. Landlord and Landlord's agents and employees shall not be liable to Tenant for any injury to persons or damage to property resulting from the Demised Premises or other premises owned by Landlord becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness (except where due to Landlord's negligence or willful failure to make repairs required to be made hereunder) or by fire, explosion, falling plaster or ceiling. Landlord shall indemnify and hold harmless Tenant, its officers, directors, agents and employees from and against any and all claims arising from or in connection with (i) any act, omission or negligence of Landlord, its partners, directors, officers, agents, employees or contractors and (ii) any breach or default by Landlord in the full and prompt performance of Landlord's obligations under this Lease, together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought therein, including, without limitation, reasonable attorneys' fees and court costs. This indemnification provision shall be applicable during the entire term of this Lease, or any renewal or extension of same, and shall survive the termination thereof.

16. Condemnation. The Building and Demised Premises are scheduled for condemnation at the end of the one (1) year term of this Lease. If, during the term of this Lease or any extension or renewal thereof, all or a substantial part of the Demised Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective from the date of taking of the Demised Premises by the condemning authority.

17. Holding Over. Landlord plans to sell the Demised Premises at the end of the one (1) year term to the condemning authority. Although unlikely, should Tenant or any of its successors in interest fail to surrender the Demised Premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month, at a monthly rental equal to one hundred twenty-five percent (125%) of the monthly rent payment paid for the last month of the term of this Lease (in addition to the sums with respect to insurance, utilities, taxes and assessments and other expenses Tenant is obligated to pay to Landlord hereunder) unless otherwise agreed in writing.

18. Default by Tenant. The following events shall be deemed to be events of default under this Lease:

a. Failure of Tenant to pay any installment of the rent or other sum payable to Landlord hereunder on the date that same is due and such failure shall continue for a period of ten (10) days after written notice thereof to Tenant.

b. Failure of Tenant to comply with any term, condition or covenant of the Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant or if such failure cannot be cured within thirty (30) days, if Tenant has failed to commence to cure such failure within such thirty (30) day period.

c. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligation.

d. Filing of a petition in bankruptcy or filing of a petition under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.

e. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder.

f. Abandonment by Tenant of all of the Demised Premises or cessation of use of the Demised Premises for the purpose leased.



**g. The assignment or subleasing of the Demised Premises without the prior written consent of Landlord, except as authorized in Section 13.**

**19. Remedies of Landlord. Upon the occurrence of any of the events of default listed in Section 18, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:**

**a. Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord. If Tenant fails to so surrender such premises, Landlord may, without prejudice to any other remedy which it may have for possession of the Demised Premises or arrearages in rent, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying such premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise, specifically including but not limited to (1) all reasonable expenses necessary to relet the Demised Premises which shall include the cost of renovating, repairing, and altering the Demised Premises for a new tenant or tenants, advertisements and brokerage fees; and (2) any increase in insurance premiums caused by the vacancy of the Demised Premises. Nothing contained in this Lease shall limit or prejudice the right of Landlord to provide for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.**

**b. Enter upon and take possession of the Demised Premises, without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying such premises or any part thereof. Landlord may relet the Demised Premises and receive the rent therefor. Tenant agrees to pay to Landlord monthly or on demand from time to time any deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, the brokerage commission, attorney's fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting.**

**c. Enter upon the Demised Premises, without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord upon demand for expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the highest lawful rate from the date of payment by Landlord until paid by Tenant. Landlord shall not be liable for any**

damages resulting to the Tenant from such action, whether caused by negligence of Landlord or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

20. Attorney's Fees. If any breach or default beyond notice and the expiration of any applicable grace period occurs by either Landlord or Tenant of its obligations to one another under the terms and conditions of this Lease and should it become necessary for Landlord or Tenant to employ an attorney of its choice to enforce or defend any of its rights or remedies hereunder, the awarded party shall be entitled to be reimbursed and paid any and all reasonable attorney's fees incurred in such connection from the unawarded party.

21. Quiet Enjoyment and Subordination. Landlord warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of the rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Demised Premises during the full term of this Lease and any extension or renewal hereof; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the Demised Premises. Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises, and subject to the terms hereof Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may reasonably request.

22. Waiver of Default. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

23. Certificate of Occupancy. A Certificate of Occupancy has been obtained for the current use which is the same as the planned use and such certificate is attached hereto as Exhibit B. If necessary and upon request by Landlord, Tenant will apply for a Certificate of Occupancy to be issued by the municipality in which the Demised Premises are located. Landlord will be responsible for any and all alterations and improvements to the Demised Premises necessary to bring the Demised Premises into full conformance to city codes and requirements.

24. Force Majeure. In the event performance by either the Landlord or Tenant of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, restriction by any governmental authority, civil riot, flood, and any other cause not within the control of Landlord or Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord or Tenant is so delayed or hindered.

25. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.

26. Use of Language. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

27. Captions. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

28. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, assigns and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney. It is hereby covenanted and agreed that should Landlord's interest in the Demised Premises cease to exist for any reason during the term of this Lease, then notwithstanding the happening of such event this Lease shall nevertheless remain unimpaired and in full force and effect and Tenant hereunder agrees to attorn to the then owner of the Demised Premises.

29. Severability. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

30. Notices. Any notice or document required or permitted to be delivered hereunder must be in writing and may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited (postmarked) in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, FedEx (or other reputable overnight courier), addressed to the parties at the following addresses or at the most recent address of which such party giving notice has notified the other party in writing:

If to Landlord:            Billy J. Mullins, Jr.  
                                     17102 Club Hill Drive  
                                     Dallas, Texas 75248

with copy to:  
Richard K. Hamilton  
Attorney at Law  
800 East Campbell, Suite 154  
Richardson, Texas 75081

If to Tenant: TestAmerica, Inc.  
122 Lyman Street  
Asheville, North Carolina 28801

with copy to:  
Zukerman Gore & Brandeis, LLP  
900 Third Avenue  
New York, New York 10022  
Attention: Clifford A. Brandeis, Esq.

31. Estoppel Certificates. Tenant agrees to furnish within ten (10) days, from time to time, upon request of Landlord or Landlord's mortgagee, a statement certifying that Tenant is in possession of the Demised Premises; the Demised Premises are acceptable; this Lease is in full force and effect; this Lease is unmodified; Tenant claims no present charge, lien, or claim of offset against the rent due under this Lease; the rent is paid for the current month, but is not paid and will not be paid for more than one month in advance, except as provided for in this Lease; to Tenant's knowledge there is no existing default by reason of some act or omission by Landlord; and such other matters as may be reasonably required by Landlord or Landlord's mortgagee.

32. Landlord's Interest in Lease. Landlord shall have the right to sell, transfer or assign, in whole or in part, its right, title, interest, and obligations with respect to the Demised Premises and this Lease. In such event, provided Landlord's successor assumes all obligations of Landlord under this Lease, Landlord shall be released from any further obligation under this Lease and Tenant agrees to look solely to Landlord's successor for the performance of such obligations. If the interests of Landlord under this Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of any mortgage on the Demised Premises, Tenant shall be bound to the transferee (sometimes called the "Purchaser") under the terms and conditions of this Lease for the balance of the remaining lease term, including any extensions or renewals, with the same force and effect as if the Purchaser were Landlord under this Lease. Tenant further agrees to attorn to the Purchaser, including the mortgagee under any such mortgage if it be the Purchaser, as its Landlord. Such attornment shall be effective without the execution of any further instruments upon the Purchaser succeeding to the interest of Landlord under this Lease. The respective rights and obligations of Tenant and the Purchaser upon the attornment, to the extent of the then remaining balance of the term of this Lease, and any extensions and renewals, shall be and are the same as those set forth in this Lease. Each such holder of any mortgage, deed of trust, or lien, and each such Purchaser, shall be a third-party beneficiary of the provisions of this Section 32.

33. No Broker Involvement. Landlord and Tenant represent and warrant to the other that no broker was involved in this transaction (and this Lease) and Landlord and Tenant shall indemnify, defend and hold the other harmless from and against any loss, cost or expense resulting from a breach of the foregoing representation and warranty. This provision and the obligations contained herein shall survive the expiration or earlier termination of this Lease.

This agreement is executed in duplicate originals and each party hereby acknowledges receipt of same.

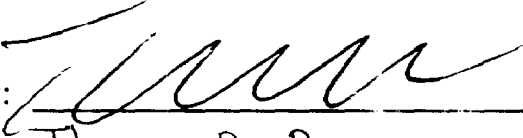
This Lease is executed effective the 18th day of December, 1998.

**Landlord:**

  
\_\_\_\_\_  
Billy J. Mullins, Jr.

**Tenant:**

TESTAMERICA, INC.

By:   
\_\_\_\_\_  
Thomas R. Barr  
President