

04-23-1999

FORM PTO-1594
6/93

RECOR

TRAI



101018430

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

7

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

MRO
4-12-99

FrontOffice Technologies, Inc.

- Individual(s) Association
- General Partnership Limited Partnership
- Corporation - State of California
- Other _____

Add'l name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other _____

Execution Date: 7/16/98

2. Name and address of receiving party(ies):

Name: NetRight Technologies

Internal Address: 2121 South El Camino Road, Ste. 400

Street Address: 2121 South El Camino Road, Ste. 400

City: San Mateo State: CA ZIP: 94403

- Individual(s) citizen
- Association _____
- Limited Partnership 04-12-1999
- Corporation - State U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22
- 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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/199,665

B. Trademark Registration No.(s)

1,968,048 1,939,878

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Dax Alvarez, Esq.

Internal Address:

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Street Address: 12400 Wilshire Boulevard

Seventh Floor

City: Los Angeles State: CA ZIP: 90025

6. Total number of applications and registrations involved: 3 3

7. Total fee (37 CFR 3.41)\$ 90

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

02-2666

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.

Dax Alvarez

Signature

Date 4/8/99

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on 4/8/99 (Date of Deposit) including cover sheet, attachments, and document: 11

Marutzarella Castro
Name of applicant, assignee, or Registered Rep.
Marutzarella Castro
Signature Date 4/8/99

04/22/1999 DNGUYEN 00000150 75199665

01 FC:481
02 FC:482

40.00 OP
50.00 OP

TRADEMARK
REEL: 1887 FRAME: 0438

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the Agreement) is made as of this 16th day of July, 1998 (Effective Date) by and between Front Office Technologies, Inc., a California corporation with principal place of business at 379 Diablo Road, Suite 206, Danville, California 94526 (Front Office) and NetRight Technologies, Inc., with principal place of business at 470 Mercury Drive, Sunnyvale, California 94086 (NetRight).

RECITALS

- A. Front Office owns certain software and other tangible and intangible assets related to Front Offices software interface products.
- B. Front Office is willing to sell, and NetRight is willing to purchase, such assets.

NOW THEREFORE, in consideration of the mutual promises and covenants of this Agreement and certain other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. As used in this Agreement, and in any documents delivered pursuant to this Agreement, the following definitions shall apply.

(a) Confidential Information means the technical information, know-how, technology, formulae, system designs, prototypes, ideas, inventions, improvements, layouts, software, concepts, techniques, discoveries, data, files, supplier and customer identities and lists, accounting records, forecasts, project management plans, marketing plans and business plans to which NetRight or any licensor or supplier, has proprietary rights and any of the foregoing which are related to the Purchased Assets, and all copies and tangible embodiments thereof (in whatever form or medium) conspicuously indicated as proprietary information, confidential information or a substantially similar legend that are not generally known by the public; provided, however, that any of the foregoing shall not be considered Confidential Information if Front Office can show that it: (i) has become publicly known through no wrongful act or breach of any obligation of confidentiality on the part of Front Office or any other third party; (ii) was rightfully received by Front Office from a third party not in violation of any contractual, legal or fiduciary obligation by such third party; (iii) was approved for release by written authorization by NetRight; or (iv) was disclosed by court order or other legal authority, provided that NetRight is given an opportunity to oppose such disclosure and if disclosed, such information is only used for the specified legal purposes.

(b) Customer Lists mean all lists, compilations, collections, data (including phone numbers, facsimile numbers and addresses) and other related information of past, current and prospective customers of Front Office and customer leads, in any and all formats, wherever located.

(c) Documentation means the user guides and instruction manuals regarding the use and functionality of software, tools or applications, whether in printed or electronic format.



(d) Equipment means the tangible personal property identified on Exhibit A.

(e) Intellectual Property shall mean any of the following owned by a party or in which a party has rights and can provide to third parties: patents, patent applications, patent disclosures and inventions (whether or not patented or patentable and whether or not reduced to practice), including any continuations, divisions, continuations-in-part, reissues or extensions of any patents and patent applications; copyrights and copyrightable works, including, but not limited to, computer software programs, and registrations and applications for registration thereof; mask works and registrations and applications for registration therefor; trademarks, service marks, trade names, logos and all registrations and applications for registration thereof; trade secrets and know-how; the Confidential Information; and all copies and tangible embodiments thereof (in whatever form or medium).

(f) Object Code means that form of machine-readable computer software which is directly executable and which, typically, is created by assembling or compiling the Source Code of computer software.

(g) Purchased Assets means the Software, Customer Lists and subject to Section 6(a) (Equipment Leases), the Equipment.

(h) Software means the Windows 95/NT shell client and the software product known as MS Outlook (including the Matchmaker product) and any software program or code with functionality similar to the foregoing, all Visual C++ code necessary and related to compiling the Object Code of any of the foregoing, including all Intellectual Property Rights therein and Object Code, Source Code and Documentation thereof, as more particularly described in Exhibit A.

(i) Source Code means that form of human or machine-readable computer software which is typically read and written by programmers (including the necessary build scripts and/or make files) which is converted by assembly or compilation into Object Code prior to execution by a computer.

2. Asset Purchase.

(a) Purchase and Sale. At the Closing (as defined below), Front Office shall sell, convey, transfer, assign and deliver to NetRight, and NetRight shall acquire and purchase from Front Office, all right, title and interest in, to and under the Purchased Assets (on an "as is, where is" basis), together with the goodwill of Front Office related thereto.

(b) Consideration; Allocation and Taxes. At the Closing, NetRight shall deliver an executed promissory note in the principal amount of [REDACTED] in the form attached hereto as Exhibit B (the Note). Each party agrees to report this transaction for federal and state tax purposes in accordance with the allocations proposed in writing by NetRight or NetRights accountants. NetRight shall pay all sales or other similar taxes arising out of the sale and transfer of the Purchased Assets.

(c) No Assumption of Liabilities. Upon the Closing, NetRight will assume no liabilities or obligations of Front Office whatsoever. For example, without limitation, NetRight shall have no liability whatsoever for any outstanding, unpaid or delinquent obligations of any type which Front Office or any other third party may have related to or arising out of the development of the Purchased Assets by or on behalf of Front Office or the license or other distribution of the Software.

(d) Closing and Closing Date. The Closing of the transaction hereunder (the Closing) shall take place at the offices of Gray Cary Ware & Freidenrich LLP at 10:00 a.m. on July 27, 1998 (the Closing Date), or at such other place and time and Front Office and NetRight may agree in writing. Notwithstanding the foregoing, the parties agree to seek to have the Closing occur as soon as commercially practicable.

(e) Closing Deliveries. At the Closing, (x) Front Office will deliver (i) a bill of sale in the form attached as Exhibit C conveying, in the aggregate, ownership of all of the Purchased Assets to Front Office; (ii) such additional duly executed documents of assignment or transfer of title as may be necessary to transfer and assign to NetRight the Purchased Assets and to permit NetRight to register ownership of any of the Purchased Assets in its own name; and (iii) all Purchased Assets, in any and all forms, shall be delivered to NetRight in a form mutually agreeable to NetRight and Front Office, and (y) NetRight will deliver the executed Note to Front Office.

(f) Assignment Procedures.

(i) Effecting Assignment. NetRight and Front Office agree to enter into assignment agreements to record the assignment of the copyrights, trademarks, patents and patent applications to be assigned to NetRight under this Agreement with the United States Patent and Trademark and Copyright Offices and equivalent offices and agencies in other countries or political subdivisions thereof. On a "best efforts" basis, Front Office shall file all such assignment agreements so that all assignments will be completed as soon as practicably possible. The cost of effecting such assignments shall be paid by NetRight.

(ii) Further Assistance. At NetRight's expense, Front Office agrees to perform all acts deemed necessary or desirable by NetRight to permit and assist NetRight in perfecting and enforcing its rights to the Purchased Assets acquired under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in the registration and enforcement, including litigation, of applicable patents and copyrights or other legal proceedings.

3. Confidentiality. For a period of five (5) years after receipt of any Confidential Information, Front Office shall keep and maintain the Confidential Information in strictest confidence and, except as otherwise expressly provided herein, Front Office shall not use the Confidential Information and shall not provide or otherwise make available, whether directly or indirectly, any of the Confidential Information to any person other than as required by any applicable law. Front Office shall take all reasonable actions (by instruction, agreement or otherwise) necessary to maintain the confidentiality of the Confidential Information.

4. Warranties.

(a) Representations and Warranties of Front Office. Front Office represents and warrants the following:

(i) Ownership. Front Office is the sole and exclusive owner of all right, title and interest in and to the Purchased Assets.

(ii) Encumbrances. To the best of Front Office's knowledge, the Purchased Assets are free and clear of all undisclosed encumbrances, including, without limitation, security interests, licenses, liens, charges or other restrictions that are inconsistent with the rights granted to NetRight under this Agreement. The execution and delivery of this Agreement will be effective upon the Closing, transfer to and vest in NetRight good, valid and marketable title to the Purchased Assets.

(iii) Trade Secret. To the best of Front Office's knowledge, Front Office has maintained the Purchased Assets in confidence, has afforded them all of the intellectual property protections as are customary and ordinary in the usual conduct of its business with respect to other similar intellectual property which is proprietary to Front Office (but in no event has protected the Purchased Assets with less than reasonable care) and has not granted any third party licenses to the Purchased Assets which have not previously been disclosed to NetRight.

(iv) Non-Infringement. To the best of Front Office's knowledge, NetRight's exercise of the rights and licenses obtained under this Agreement does not and will not violate any third party rights to Intellectual Property.

(v) Authority. Front Office has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement, and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Front Office, and the consummation by Front Office of the transactions contemplated hereby, have been duly authorized prior to the execution of this Agreement by all requisite corporate action on the part of Front Office, and this Agreement constitutes a valid and binding obligation of Front Office enforceable against Front Office in accordance with its terms. No consent, approval or authorization of or designation, declaration or filing with any third party or governmental authority on the part of Front Office is required in connection with the valid execution, delivery and performance by Front Office of this Agreement, and the consummation by Front Office of the transactions contemplated hereby.

(vi) Organization and Good Standing. Front Office is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and has the requisite corporate power to own and operate its properties and assets, and to carry on its business as presently conducted. Nothing contained in any of the charter documents of Front Office prevents the consummation of the transactions contemplated by this Agreement.

(vii) No Liabilities. There are no liabilities with respect to the Purchased Assets except as already disclosed to NetRight.

(viii) Business Authorizations. To the best of Front Offices knowledge, Front Office is in compliance, in all material respects, with all laws and governmental regulations applicable to Front Offices business and operations as they relate to the Purchased Assets.

(b) Disclaimer. FRONT OFFICE DOES NOT MAKE ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO ANY OF THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND THE PURCHASED ASSETS ARE SOLD TO NETRIGHT ON AN AS-IS AND WHEREAS BASIS.

5. Conditions to Closing.

(a) Conditions Precedent to NetRights Performance. NetRights obligations hereunder are subject to the satisfaction, at or before the Closing, of all of the following conditions, any or all of which may be waived by NetRight in writing:

(i) Accuracy of Representations and Warranties. All representations and warranties of Front Office in Section 4 (Warranties) shall be, in all material respects and to the best knowledge of Front Office, true and accurate as of the Closing Date as though made at that time.

(ii) Performance of Obligations. Front Office shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by Front Office on or before the Closing Date.

(iii) Approval. The execution and delivery of this Agreement by Front Office and the performance of Front Offices covenants and obligations under this Agreement shall have been duly authorized by all necessary and required corporate and shareholder action.

(iv) No Adverse Change. There shall not have occurred any event and NetRight shall not have discovered any fact or circumstance which may reasonably be expected to have a material adverse effect on the Purchased Assets.

(v) No Litigation of Injunctions. No litigation or proceeding will be threatened or pending against Front Office (i) for the purpose or with the probable effect of enjoining or preventing the consummation of any of the transactions contemplated by this Agreement or (ii) which would have a material adverse effect on the Purchased Assets.

(vi) Approval. All consents, approvals, waivers and releases necessary to permit Front Office to effect the transactions contemplated by this Agreement shall have been obtained and shall be reasonably satisfactory in form and substance to NetRight and their counsel.

(b) Conditions Precedent to Front Offices Performance. Front Offices obligations hereunder are subject to the satisfaction, at or before the Closing, of all of the following conditions, any or all of which may be waived by Front Office in writing:

(i) Performance of Obligations. NetRight shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by NetRight on or before the Closing Date.

(ii) Approval. The execution and delivery of this Agreement by NetRight and the performance of NetRights covenants and obligations under this Agreement shall have been duly authorized by all necessary and required corporate and shareholder action.

(iii) No Litigation of Injunctions. No litigation or proceeding will be threatened or pending against NetRight for the purpose or with the probable effect of enjoining or preventing the consummation of any of the transactions contemplated by this Agreement.

6. Covenants.

(a) Equipment Leases. Provided that the Closing has occurred, to the extent that the Equipment is not owned by Front Office and is subject to third party leases, Front Office agrees that NetRight may negotiate directly with such third party lessors to assume such leases in preference and in priority to any other third party. Upon NetRights reasonable request, and at NetRights expense, Front Office shall provide NetRight with all reasonable assistance necessary for NetRight to assume such leases at its sole cost and expense.

(b) Other Negotiations. Between the date hereof and July 27, 1998, Front Office will not (and it will use its best efforts to assure that its officers, directors, employees, agents and affiliates do not on its behalf) take any action to solicit, initiate, seek, encourage or support any inquiry, proposal or offer from, furnish any information to, or participate in any negotiations with, any corporation, partnership, person or other entity or group (other than discussions with NetRight) regarding any acquisition of Front Office, any merger or consolidation with or involving Front Office, or any acquisition of any Purchased Assets. Front Office agrees that any such negotiations in progress as of the date hereof will be terminated or suspended during such period. Front Office will immediately notify NetRight regarding any contact by any third party regarding any offer, proposal or inquiry regarding any such acquisition or financing of Front Office. In no event will Front Office accept or enter into an agreement concerning any such third party transaction. Front Office represents and warrants that it has the legal right to terminate or suspended any such pending negotiations and agrees to indemnify NetRight, its representatives and agents from and against any claim by any party to such negotiations based upon or arising out of the discussion or any consummation of the transactions hereunder.

(c) No Public Announcement; No Disclosure. Under no circumstances will Front Office discuss or disclose the existence or terms of this Agreement with or to any third party other than such legal, accounting and financial advisors of Front Office who have a need to know such information solely for purposes of assisting Front Office in regard to the transactions contemplated hereby.

(d) Due Diligence. NetRight and its counsel and advisors shall have reasonable access during normal business hours to all books, records, assets and contracts of Front Office to complete its diligence investigation for purposes of the transactions contemplated hereby. Key

personnel shall be made available by Front Office as necessary to assist in this diligence effort. Additionally, Front Office will permit NetRight to contact key customers and suppliers as part of the due diligence process.

(e) Existing Customers. Front Office shall terminate all continuing support and maintenance activity effective as of the Closing. NetRight shall not assume any obligations of Front Office with respect to Front Office's customers, partners, employees or vendors and Front Office shall have sole and exclusive responsibility for any refunds related to or arising out of such termination. All existing and prospective customers of Front Office contacting Front Office in any manner, whether by facsimile, email or telephone, shall be advised to contact NetRight at the following phone numbers, email address and website address, respectively: (408) 523-4005; [email address], <http://www.netright.com>.

7. Consequential Damages Waiver. NEITHER PARTY SHALL HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED (INCLUDING BUT NOT LIMITED TO CONTRACT, TORT OR STRICT LIABILITY), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NETRIGHTS DAMAGES UNDER THIS AGREEMENT EXCEED THE SUMS PAYABLE UNDER THE NOTE.

8. Termination. This Agreement shall terminate (i) at any time prior to the Closing upon the mutual written consent of the parties or (ii) automatically, if the Closing has not occurred by July 31, 1998. Section 3 and the representations and warranties of Front Office shall survive any termination of this Agreement.

9. General Provisions.

(a) No Prejudice. No failure or delay on the part of any party to exercise its rights hereunder for any one or more defaults shall be construed to prejudice its rights for such default or for any subsequent default.

(b) Amendments; Waivers. This Agreement, together with the Exhibits attached hereto, may be amended only by agreement in writing of all parties to such document. No waiver of any provision or consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

(c) Attachments; Integration. This Agreement, together with such Exhibits, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith.

(d) Governing Law. This Agreement and the legal relations between the parties will be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in such state and without regard to conflicts of law doctrines. The

parties agree that any action arising out of or related to this Agreement will be brought in the state or federal courts located in Santa Clara County, California.

(e) Counterparts. This Agreement and any amendment hereto or any other agreement or document delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same instrument and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party.

(f) Parties In Interest. This Agreement shall be binding upon and shall inure to the benefit of each party, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the obligation of any third person to (or to confer any right of subrogation or action over or against) any party to this Agreement.

(g) Notices. Notices or other communications required to be given pursuant to this Agreement shall be written in English and delivered personally or sent in letter form or by facsimile to the address of the recipient specified at the beginning of this Agreement. The dates on which notices will be deemed to have been effectively given will be determined as follows: (i) notices given by personal delivery, including courier delivery, will be deemed effectively given on the date of personal delivery; (ii) notices given in letter form will be deemed effectively given five (5) business days after the date mailed by registered airmail, postage prepaid; and (iii) notices given by facsimile will be deemed effectively given on the first business day following the date of transmission, as indicated on the document in question.

(h) Remedies; Waiver. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

(i) Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

(j) Expenses. NetRight shall pay its own fees and expenses incurred in connection with the transactions hereunder and all legal fees and costs of Front Office up to a maximum of [REDACTED]. All Front Office costs and expenses in excess of [REDACTED] shall be Front Offices sole responsibility.

IN WITNESS WHEREOF, each of the parties hereby has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

FRONT OFFICE TECHNOLOGIES, INC.

By: Richard G. Couch

Title: Chief Executive Officer

NETRIGHT TECHNOLOGIES, INC.

By: Mahmood Paniwani, President