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FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Handwritten: 2. 23. 01

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
 - Security Agreement Nunc Pro Tunc Assignment
 - Merger Change of Name
 - Other
- Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership Association
- Corporation Association
- Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization

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Mail documents to be recorded with required cover sheet(s) information to:
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REEL: 002246 FRAME: 0569

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

Number of Properties Enter the total number of properties involved.

#

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

George D. Dickos

2/23/01

Name of Person Signing

Signature

Date Signed

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement (the "Agreement") is entered into as of April 30, 1998 by and among Magellan Network Systems, Inc., a California corporation ("Transferee"), Michael S. Colbert ("Principal") and Access Communications, Inc., a Hawaii corporation ("Transferor").

RECITALS

Transferee is in the business of providing turn-key, fault-tolerant, switch-based telecommunications systems. Transferor conducts a business which provides billing and management software for Transferee's telecommunications products (the "Business"). Transferee desires to acquire from Transferor, and Transferor desires to sell to Transferee, substantially all of the assets of the Business on the terms and subject to the conditions set forth in this Agreement and to liquidate as promptly as practicable after the date hereof. Principal is the principal shareholder of Transferor.

The parties hereto intend that the transfer of assets pursuant to this Agreement shall constitute a reorganization within the meaning of Section 368(a)(1)(c) of the Code and that this Agreement shall constitute a "plan of reorganization."

AGREEMENT

In consideration of the mutual agreements, representations, warranties and covenants set forth below, Transferee, Transferor and Principal agree as follows:

1. Definitions

1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

- (a) "Affiliate" means with respect to any Person, a Person directly or indirectly controlling or controlled by or under common control with such Person.
- (b) "Closing" means the consummation of the transactions contemplated hereby.
- (c) "Closing Date" means the date of the Closing.
- (d) "Code" means the Internal Revenue Code of 1986, as amended.
- (e) "GAAP" means generally accepted accounting principles of the United States as set forth by the Financial Accounting Standards Board.

EXHIBIT D

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(f) "Governmental Authorizations" means the permits, authorizations, consents or approvals of any Governmental Entity which are a condition to the lawful consummation of the transactions contemplated hereby listed on Schedule 1.1(f) to this Agreement.

(g) "Governmental Entity" means any court, or any federal, state, municipal or other governmental authority, department, commission, board, agency or other instrumentality (domestic or foreign).

(h) "Key Employees" shall mean the following employees of Transferor: Stephen Lee, Kevin Oshiro, Iris Arroyo and Tony Hart.

(i) "Lien" means any mortgage, pledge, lien, security interest, option, covenant, condition, restriction, encumbrance, charge or other third-party claim of any kind.

(j) "Material Adverse Effect" with respect to a Person means any event, change or effect that is materially adverse to the condition (financial or otherwise), properties, assets, liabilities, business, operations, results of operations, or prospects of such Person and its Affiliates, taken as a whole.

(k) "Person" means an individual, corporation, partnership, association, trust, government or political subdivision or agent or instrumentality thereof, or other entity or organization.

(l) "Taxes" means all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, (i) imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, for which Transferee could become liable as successor to or transferee of the Business or the Acquired Assets or which could become a charge against or lien on any of the Acquired Assets, which taxes shall include, without limiting the generality of the foregoing, all sales and use taxes, S-Corporation taxes, ad valorem taxes, excise taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, real property gains taxes, transfer taxes, payroll and employee withholding taxes, unemployment insurance contributions, social security taxes, and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which are required to be paid, withheld or collected, or (ii) any liability for amounts referred to in (i) as a result of any obligations to indemnify another person.

2. Delivery of Assets

2.1 Transfer of Assets. Subject to the terms and conditions of this Agreement, Transferor shall sell, assign, grant, transfer, and deliver (or cause to be sold, assigned, granted, transferred and delivered) to Transferee and Transferee shall acquire and accept from Transferor as of the Closing Date, free and clear of all Liens, all of the Transferor's rights, title and interest in and to all of the assets, properties and business of Transferor owned, held or used by Transferor (other than the Excluded Assets listed on Schedule 2.2) (the "Acquired Assets"). including, without limitation:

- (a) all real property and leases of and other interests in real property, in each case together with all buildings, fixtures and improvements thereon, including, without limitation, the items listed on Schedule 2.1(a) and the equipment leases for computer equipment listed in the Transferor's March 1998 Balance Sheet (as defined below);
- (b) all tangible personal property and leases of and other interests in tangible personal property used in connection with the Business, including, without limitation, the items listed on Schedule 2.1(b);
- (c) all raw materials, work-in-process, finished goods, supplies and other inventories of the Business (the "Inventories");
- (d) all rights under contracts, agreements, leases and other interests in real and personal property, licenses, commitments, sales and purchase orders and other instruments, including, without limitation, the items listed on Schedule 2.1(c) (collectively the "Contracts");
- (e) all accounts receivable, notes receivable and other receivables, except as listed on Schedule 2.2;
- (f) all prepaid expenses relating to the operation of the Business including, but not limited to Taxes, leases and rentals;
- (g) all of Transferor's rights, claims, credits, causes of action or rights of set-off against third parties relating to the Acquired Assets, including, without limitation, unliquidated rights under warranties;
- (h) all copyrights, copyright registrations, proprietary processes, trade secrets, license rights, specifications, technical manuals and data, drawings, inventions, designs, patents, patent applications, trade names, trademarks, service marks, product information and data, know-how and development work-in-progress, customer lists, software, business and marketing plans and other intellectual or intangible property embodied in or pertaining to the Business, whether pending, applied for or issued, whether filed in the United States or in other countries, including without limitation the items listed in Schedule 2.1(h), together with all associated goodwill;
- (i) all things authored, discovered, developed, made, perfected, improved, designed, engineered, acquired, produced, conceived or first reduced to practice by Transferor or

any of its employees or agents that are embodied in, derived from or relate to the Business, in any stage of development, including, without limitation, modifications, enhancements, designs, concepts, techniques, methods, ideas, flow charts, coding sheets, notes and all other information relating to the Business:

(j) any and all design and code documentation, methodologies, processes, trade secrets, copyrights, design information, product information, technology, formulae, routines, engineering specifications, technical manuals and data, drawings, inventions, know-how, techniques, engineering work papers, and notes, development work-in-process, and other proprietary information and materials of any kind relating to, used in, or derived from the Acquired Assets (collectively with subsections (h) and (i), the "Intellectual Property");

(k) all permits, authorizations, consents and approvals of any Governmental Entity affecting or relating in any way to the Business, including without limitation, the items listed on Schedule 2.1(k) (the "Permits");

(l) all books, records files and papers, whether in hard copy or electronic format, used in the Business, including without limitation, engineering information, sales and promotional literature, manuals and data, sales and purchase correspondence, lists of present, former and prospective suppliers or customers, personnel and employment records, and any information relating to Taxes imposed on the Business or Acquired Assets;

(m) all computer software programs, data and associated licenses used in connection with the Business; and

(n) all goodwill associated with the Business or the Acquired Assets, together with the right to represent to third parties that Transferee is the successor to the Business.

2.2 Excluded Assets. Transferee agrees that notwithstanding any provision of Section 2.1 the assets of Transferor listed on Schedule 2.2 (the "Excluded Assets") shall be excluded from the Acquired Assets.

2.3 Certain Intellectual Property. Schedule 2.3 attached to this Agreement describes generally certain third party confidential information used in the Transferor's intellectual property which can not be disclosed to or used by Transferee without the consent of the third party. Transferee acknowledges and agrees that such third party confidential information is not part of the Acquired Assets and that neither Transferor nor Principal will have any obligation to obtain or solicit consent to Transferee's use of such confidential information. Transferor acknowledges and agrees, however, that the preceding two sentences shall not serve to modify or limit Transferee's representations in Section 4.11 below and acknowledges, agrees, represents and warrants that such confidential information will not impair other uses of the Acquired Assets or Transferee's ability to conduct the Business as presently conducted by Transferor, other than the Business presently conducted using such third party confidential information.

2.4 **Transfer of Liabilities.** Subject to the terms and conditions of this Agreement, Transferee agrees, effective as of the Closing Date, to assume only the following liabilities (the "Assumed Liabilities").

(a) the liabilities set forth on Schedule 2.4(a) to the extent set forth thereon;
and

(b) the liabilities and obligations of Transferor arising under the Contracts, other than the liabilities attributable to any failure by Transferor to comply with the terms thereof.

2.5 **Excluded Liabilities.** Except for those liabilities expressly assumed by Transferee pursuant to Section 2.4, Transferee shall not assume and shall not be liable for, and Transferor and its direct or indirect subsidiaries shall retain and remain solely liable for and obligated to discharge, all of the debts, contracts, agreements, commitments, obligations and other liabilities of any nature whatsoever of Transferor and its direct and indirect subsidiaries, whether known or unknown, accrued or not accrued, fixed or contingent, including without limitation, the following:

(a) Any liability for breaches by Transferor or any of its respective direct or indirect subsidiaries on or prior to the Closing Date of any contract or any other instrument, contract or purchase order or any liability for payments or amounts due under any Contract or any other instrument, contract or purchase order on or prior to the Closing Date;

(b) Any liability or obligation for Taxes attributable to or imposed upon Transferor or any of its direct or indirect subsidiaries, or attributable to or imposed upon the Acquired Assets for any period (or portion thereof) through the Closing Date, including, without limitation, any Taxes attributable to or arising from the transactions contemplated by this Agreement;

(c) Any liability or obligation for or in respect of any loan, other indebtedness for money borrowed, or account payable of Transferor or any of its direct or indirect subsidiaries, including any such liabilities owed to Affiliates of Transferor;

(d) Any liability or obligation arising as a result of any legal or equitable action or judicial or administrative proceeding initiated at any time, to the extent relating to any action or omission on or prior to the Closing Date by or on behalf of Transferor or any of its direct or indirect subsidiaries, including, without limitation, any liability for infringement of intellectual property rights, breach of product warranty, injury or death caused by products, or violations of federal or state securities or other laws;

(e) Any liability or obligation arising on or prior to the Closing Date out of any "employee benefit plan," as such term is defined by the Employee Retirement Income Security Act of 1974 ("ERISA") or other employee benefit plans;

(f) Any liability or obligation for making payments of any kind (including as a result of the transfer of Acquired Assets or as a result of the termination of employment by Transferor of employees, or other claims arising out of the terms and conditions of employment with Transferor, or for vacation or severance pay or otherwise) to employees of Transferor or in respect of payroll taxes for employees of Transferor:

(g) Any liability of Transferor incurred in connection with the making or performance of this Agreement and the transactions contemplated hereby:

(h) Any liability of Transferor arising out of the violation of or failure to comply with any Environmental Regulations (as hereinafter defined) applicable to any aspect of the Business; and

(i) Any costs or expenses of Transferor incurred in connection with shutting down, deinstalling and removing equipment not purchased by Transferee, and the costs associated with all contracts and agreements not assumed by Transferee.

2.6 **Consideration.** Subject to the performance by Transferor of all of its obligations under this Agreement (including delivering all documents required to be delivered) at the Closing, in consideration of the acquisition of the Acquired Assets under Section 2.1, Transferee agrees (a) to deliver to Transferor, or an account or accounts designated by Transferor, 300,000 shares of Transferee's Series A Preferred Stock (the "Preferred Shares") and 600,000 shares of Transferee's Common Stock (the "Common Shares" and together with the Preferred Shares, the "Immediate Consideration"); (b) to deliver to Transferee's Secretary ("Escrow Agent") or an account or accounts designated by Escrow Agent, 33,334 shares of Transferee's Series A Preferred Stock and 66,666 shares of Transferee's Common Stock (the "Escrow Consideration" and together with the Immediate Consideration, the "Consideration"), which consideration shall be subject to the provisions of the Escrow Agreement attached as Exhibit A to this Agreement and (c) to assume the Assumed Liabilities.

2.7 **Authorization.** Transferee will authorize the transfer and issuance of at least an additional 333,334 shares of its Series A Preferred Stock, having the rights, privileges and preferences as set forth in the Amended and Restated Articles of Incorporation in the form previously provided to Transferor's counsel.

3. **Closing**

3.1 **Closing.** The closing of the purchase and transfer of the Acquired Assets under this Agreement shall be held at the offices of Venture Law Group, 2800 Sand Hill Road, Menlo Park, California at 4:30 p.m., on April 30, 1998, or as soon as is legally possible thereafter.

3.2 **Actions at the Closing.** At the Closing, Transferor shall deliver the Acquired Assets to Transferee, Transferee shall deliver the Immediate Consideration to Transferor and deliver the Escrow Consideration to the Escrow Agent, and Transferee and Transferor shall take such actions and execute and deliver such agreements, bills of transfer, and other instruments and

documents as necessary or appropriate to effect the transactions contemplated by this Agreement in accordance with its terms, including without limitation the following:

(a) **Bill of Transfer.** Transferor shall deliver to Transferee a general Bill of Transfer substantially in the form attached as Exhibit B in each case duly executed by Transferor, and in the aggregate assigning to Transferee all of Transferor's right, title and interest in and to the Acquired Assets.

(b) **Consideration.** Transferee shall deliver the Immediate Consideration to Transferor and the Escrow Consideration to Escrow Agent.

(c) **Title.** Transferor shall provide reasonable evidence of valid title to such of the Acquired Assets as Transferee may reasonably request in writing prior to the Closing, in form and substance reasonably satisfactory to Transferee.

(d) **Third Party Consents and Assignments.** Subject to the provisions of Sections 2.3 and 6.3(b) of this Agreement, both prior to and after the Closing, Transferor and Purchaser shall use their best efforts to deliver promptly to Transferee any assignments, and any required consents to assignment, that Transferor has obtained in respect of the Contracts, duly executed by parties having the authority to so assign or consent to assign, in form and substance as Transferee shall reasonably request, including without limitation those listed on Schedule 4.6 as well as a written confirmation from such third parties that the Contracts are in good standing.

(e) **Post-Closing Actions.** Subsequent to the Closing Date, Transferor and Principal shall, and shall cause any Affiliate of Transferor or Principal to, from time to time execute and deliver, upon the reasonable request of Transferee, all such other and further materials and documents and instruments of conveyance, transfer or assignment as may reasonably be requested by Transferee to effect, record or verify the transfer to and vesting in Transferee of Transferor's and any of Transferor's Affiliates' right, title and interest in and to the Acquired Assets, free and clear of all Liens in accordance with the terms of this Agreement.

4. Representations and Warranties of Transferor and Principal

Each representation and warranty set forth below is qualified by any exception or disclosures set forth in the Transferor and Principal Disclosure Schedule (the "Transferor Disclosure Schedule") attached hereto. In all other respects, each representation and warranty set out in this Section 4 is not qualified in any way whatsoever, will not merge on Closing or by reason of the execution and delivery of any agreement, document or instrument at the Closing, will remain in force on and after the Closing Date until such date as set forth in Section 8.1 below, is given with the intention that liability is not confined to breaches discovered before Closing unless such liability is set forth in the Transferor Disclosure Schedule, is separate and independent and is not limited by reference to any other representation or warranty or any other provision of this Agreement, and is made and given with the intention of inducing the Transferee to enter into this Agreement. The representations and warranties are made as of the date hereof only, and neither Principal nor Transferor will have any duty to update or modify the

representation or warranties after the Closing Date. Transferor and Principal represent and warrant jointly and separately to Transferee as follows:

4.1 **Organization, Standing and Power.** Transferor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Transferor has the requisite corporate power and authority and all necessary permits, authorizations, consents, and approvals of all Governmental Entities to own, lease and operate its properties and to carry on the Business as now being conducted and as proposed to be conducted, except where the failure to have such power, authority and governmental approvals would not, individually or in the aggregate, have a Material Adverse Effect on the Business. Transferor is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that would not, individually or in the aggregate, have a Material Adverse Effect on the Business.

4.2 **Authority.** The execution and delivery of this Agreement (and all other agreements and instruments contemplated under this Agreement) by Transferor, the performance by Transferor of its obligations hereunder and thereunder, and the consummation by Transferor of the transactions contemplated hereby and thereby have been duly authorized by all necessary action by the Board of Directors and shareholders of Transferor, and no other act or proceeding on the part of or on behalf of Transferor or its shareholders is necessary to approve the execution and delivery of this Agreement and such other agreements and instruments, the performance by Transferor of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby. The signatory officers of Transferor have the power and authority to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Transferor pursuant hereto, to consummate the transactions hereby and thereby contemplated and to take all other actions required to be taken by Transferor pursuant to the provisions hereof and thereof.

4.3 **Execution and Binding Effect.** This Agreement has been duly and validly executed and delivered by Transferor and Principal and constitutes, and the other agreements and instruments to be executed and delivered by Transferor and Principal pursuant hereto, upon their execution and delivery by Transferor and Principal, will constitute (assuming, in each case, the due and valid authorization, execution and delivery thereof by Transferee), legal, valid and binding agreements of Transferor and Principal, enforceable against Transferor and Principal in accordance with their respective terms, except as such enforceability may be limited by bankruptcy and similar laws and general principals of equity.

4.4 **Consents and Approvals of Governmental Entities.** Other than the Governmental Authorizations there is no requirement applicable to Transferor to make any filing, declaration or registration with, or to obtain any permit, authorization, consent or approval of, any Governmental Entity as a condition to the lawful consummation by Transferor of the transactions contemplated by this Agreement and the other agreements and instruments to be

executed and delivered by Transferor pursuant hereto or the consummation by Transferor of the transactions contemplated herein or therein.

4.5 **No Violation.** Neither the execution, delivery and performance of this Agreement and all of the other agreements and instruments to be executed and delivered pursuant hereto, nor the consummation of the transactions contemplated hereby or thereby, will, with or without the passage of time or the delivery of notice or both, (a) conflict with, violate or result in any breach of the terms, conditions or provisions of the Articles of Incorporation or Bylaws of Transferor, (b) conflict with or result in a violation or breach of, or constitute a default or require consent of any Person (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any contract, notice, bond, mortgage, indenture, license, franchise, permit, agreement, lease or other instrument or obligation to which Transferor is a party or by which Transferor or any of the Acquired Assets may be bound, (c) violate any statute, ordinance or law or any rule, regulation, order, writ, injunction or decree of any Governmental Entity applicable to Transferor or by which any properties or assets of Transferor may be bound, or (d) result in any cancellation of, or obligation to repay, any grant, loan or other financial assistance received by Transferor from any Governmental Entity. The Transferor has taken all necessary action to comply with "bulk sales" legislation applicable to the transactions contemplated by this Agreement.

4.6 **Consents.** Schedule 4.6 sets forth each agreement, contract or other instrument binding upon Transferor requiring a consent as a result of the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, except such consents as would not, individually or in the aggregate, have a Material Adverse Effect if not received by the Closing Date (each a "**Required Consent**").

4.7 **Financial Information.** Transferor has delivered to Transferee an unaudited balance sheet for the Business at March 14, 1988 (the "**March 1988 Balance Sheet**"), a copy of which is set forth in the Transferor Disclosure Schedule. The March Balance Sheet accurately and correctly in all material respects discloses the amounts of the Acquired Assets as of the Closing Date. Transferor has delivered to Transferee copies of its unaudited statements of income for the Business for the fiscal years ended December 31, 1995, December 31, 1996 and December 31, 1997 (together with the March 1988 Balance Sheet, the "**Financial Statements**"). The Financial Statements present fairly the financial condition, operating results and cash flows of the Business as of the dates and during the periods indicated therein, subject to normal year-end adjustments, which will not be material in amount or significance.

4.8 **No Undisclosed Liabilities.** Transferor does not have any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, in excess of \$5,000 individually or in the aggregate, whether accrued, absolute, contingent, matured, unmatured or other (whether or not required by GAAP to be reflected in the Financial Statements which (i) has not been reflected in the March 1988 Balance Sheet, or (ii) has not arisen in the ordinary course of the Transferor's business since March 14, 1988.

4.9 Absence of Certain Changes. Since March 14, 1998, Transferor has conducted the Business in the ordinary course consistent with past practice and Transferor:

(a) has not created, incurred or assumed (i) any borrowings under capital leases, or (ii) any obligation which in any material way affects the Business, the Acquired Assets or Transferee's ability to conduct the Business in substantially the same manner and condition as conducted by Transferor on both March 14, 1998 and the date of this Agreement;

(b) has not changed in any manner the compensation of, or agreed to provide additional benefits to, or enter into any employment agreement with, any Employee (as hereinafter defined);

(c) has maintained insurance coverage in amounts adequate to cover the reasonably anticipated risks of the business conducted with the Acquired Assets;

(d) has not acquired or agreed to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the Business;

(e) has not sold, disposed of or encumbered any of the Acquired Assets or licensed any Acquired Assets to any Person except for the sale of Inventory in the normal course of business consistent with past practice;

(f) has not engaged in any special promotion which promotes the sale of Inventory with highly discounted terms;

(g) has not entered into any agreements or commitments relating to the business conducted with the Acquired Assets, except on commercially reasonable terms in the ordinary course of business;

(h) has complied in all material respects with all laws and regulations applicable to the Business;

(i) has not entered into any agreement with any third party for the distribution of any of the Acquired Assets;

(j) has not changed or announced any change to the products or services sold by the Business except with Transferee's written consent or at Transferee's request;

(k) has not expanded the use of the Acquired Assets within the organization of Transferor;

(l) has not violated, amended or otherwise changed in any way the terms of any of the Contracts;

(m) has not commenced a lawsuit related to or involving the Acquired Assets other than for the routine collection of bills;

(n) has not assigned, sold or otherwise conveyed to any third party, any of its accounts receivable prior to the Closing Date; or

(o) made any agreement to do any of the foregoing.

4.10 Assets Generally.

(a) The Acquired Assets include all properties, tangible and intangible, and only such properties, currently used by Transferor in operating the Business and necessary for Transferee to operate the Business after the Closing Date in a manner substantially equivalent to the manner in which Transferor has operated the Business prior to and through both March 14, 1998 and the Closing Date. Other than the Required Consents and the Governmental Approvals, no licenses or other consents from, or payments to, any other Person are or will be necessary for Transferee to operate the Business and use the Acquired Assets in a manner substantially equivalent to the manner in which Transferor has operated the same through both March 14, 1998 and the Closing Date.

(b) Transferor holds good and marketable title, license to or leasehold interest in all of the Acquired Assets and has the complete and unrestricted power and the unqualified right to sell, assign and deliver the Acquired Assets to Transferee. Upon consummation of the transactions contemplated by this Agreement, Transferee will acquire good and marketable title, license or leasehold interest to the Acquired Assets free and clear of any Liens and there exists no restriction on the use or transfer of the Acquired Assets, except as may be assumed hereunder by Transferee as an Assumed Liability. No Person other than Transferor has any right or interest in the Acquired Assets, including the right to grant interests in the Acquired Assets to third parties, except for Acquired Assets licensed or leased from third parties which are set forth in the Transferor Disclosure Schedule and identified as such.

(c) None of the Acquired Assets that constitute tangible personal property is held under any lease, security agreement, conditional sales contract, lien, or other title retention or security arrangement.

(d) Except as provided in this Agreement, no restrictions will exist on Transferee's right to sell, resell, license or sublicense any of the Acquired Assets or engage in the Business, nor will any such restrictions be imposed on Transferee as a consequence of the transactions contemplated by this Agreement or by any agreement referenced in this Agreement.

(e) All of the Acquired Assets are in good operating condition and repair, as required for their use in the Business as presently conducted, and conform to all applicable laws, and no notice of any violation of any law relating to any of the Acquired Assets or Assumed Liabilities has been received by Transferor.

4.11 Intellectual Property.

(a) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby (including without limitation the continued conduct by Transferee after the Closing Date of the Business as presently conducted and proposed to be conducted by Transferor and the incorporation of any Intellectual Property in any product of Transferee or an affiliate of Transferee) will not breach, violate or conflict with any instrument or agreement governing any intellectual property necessary or required for, or used in, the conduct of the Business as presently conducted, as proposed to be conducted and as conducted on March 14, 1998 and will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any such Intellectual Property or in any material way impair the right of Transferee or any of its affiliates to use, sell, license or dispose of, or to bring any action for the infringement of, any such intellectual property or portion thereof:

(b) To Transferor's knowledge, neither the development, manufacture, marketing, license, sale or use of any product or intellectual property currently licensed, used or sold by Transferor or currently under development violates or will violate any license or agreement to which Transferor is a party or infringes or will infringe any copyright, patent, trademark, service mark, trade secret or other intellectual property or other proprietary right of any other party. All registered trademarks, service marks, patents and copyrights held by Transferor are valid and subsisting. There is no pending or to Transferor's knowledge threatened claim or litigation contesting the validity, ownership or right to use, sell, license or dispose of any of the Acquired Assets (including without limitation the Intellectual Property) necessary or required for, or used in, the conduct of the business of Transferor as presently conducted nor to Transferor's knowledge is there any basis for any such claim, nor has Transferor received any notice asserting that any such Purchased Asset (including without limitation the Intellectual Property) or the proposed use, sale, license or disposition thereof conflicts or will conflict with the rights of any other party, nor is there any basis for any such assertion. There is no material unauthorized use, infringement or misappropriation on the part of any third party of the Acquired Assets (including without limitation the Intellectual Property):

(c) Transferor has taken reasonable steps (including, without limitation, entering into confidentiality and non-disclosure agreements with all officers and employees of and consultants to Transferor with access to or knowledge of the Acquired Assets (including without limitation the Intellectual Property) to maintain the secrecy and confidentiality of, and its proprietary rights in, the Acquired Assets (including without limitation the Intellectual Property)) necessary or required for, or used in, the conduct of the business of Transferor as presently conducted. The Transferor Disclosure Schedule contains a complete and accurate list of all applications, filings and other formal actions made or taken pursuant to federal, state, local and foreign laws by Transferor to perfect or protect its interest in the Acquired Assets, including, without limitation, all patents, patent applications, trademarks, trademark applications, service marks and copyright or mask work registrations; and

(d) All fees to maintain Transferor's rights in the Intellectual Property, including, without limitation, patent and trademark registration and prosecution fees and all professional fees in connection therewith pertaining to the Intellectual Property due and payable

on or before the Closing Date, have been paid by Transferor or will be paid by Transferor within a reasonable period after the Closing.

(e) Notwithstanding any provision herein to the contrary, Transferor shall not be required to take any additional steps to register trademarks for any of the Transferor's Intellectual Property or to prosecute any patent, other than as provided in Section 6.3.

4.12 **Warranties and Indemnities.** The Transferor Disclosure Schedule sets forth a summary of all express warranties and indemnities relating to products sold or services rendered by Transferor, and no warranty or indemnity has been given by Transferor which is not listed on the Transferor Disclosure Schedule or which differs therefrom in any respect. Transferor is in compliance with all warranties described in the Transferor Disclosure Schedule. The Transferor Disclosure Schedule also indicates all warranty and indemnity claims which are currently pending against, and known to, Transferor.

4.13 **Real Property.**

(a) Schedule 2.1(a) sets forth a list of all real property currently owned or leased by Transferor and which relates to the Business, and in the case of any leases, the name of the lessor, the date of the lease and each amendment thereto and the aggregate annual rental and/or other fees payable under any such lease. All such leases are in full force and effect and have been assigned to Transferee effective upon the Closing Date, including the lease at 146 Hekili Street, Kailua, Hawaii, which has been assigned to Transferee through November 2000 at approximately \$5,000 per month. All such current leases are valid and effective in accordance with their respective terms against Transferor and the other party thereto. Transferor has delivered to Transferee a true, correct and complete copy of each lease identified on Schedule 2.1(a). The premises or property described in said leases are presently occupied or used by Transferor as lessee under the terms of said leases. Transferor is the legal and equitable owner and holder of the leasehold interest in each such lease. Transferor has all right, title and interest of the lessee under the terms of said leases, free of all Liens. To Transferor's knowledge, Transferor is not in default under any such leases (and has not caused an event which with notice or lapse of time, or both, would constitute a default), and to the Transferor's knowledge, the other party thereto is not in default (and has not caused an event which with notice or lapse of time, or both, would constitute a default) under any such leases.

(b) Any real property included in the Acquired Assets currently has access to public roads or valid easements providing access to public roads, water supply, storm and sanitary sewer facilities, telephone, gas and electrical connections, fire protection, drainage and other public utilities, as is necessary for the conduct of the Business.

(c) None of the material structures on any real property included in the Acquired Assets encroaches upon the real property of another Person, and no structure of any other Person encroaches upon any real property included in the Acquired Assets.

(d) No violation of any law, regulation or ordinance, including without limitation, laws, regulations or ordinances relating to zoning, environmental, city planning or

similar matters) relating to the Business or any Purchased Asset currently exists or has existed at any time except for violations which have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Business or the Acquired Assets. There are no developments affecting any of the Acquired Assets pending or, to the knowledge of Transferor threatened, which might materially detract from the value of such Purchase Assets, materially interfere with any present or intended use of any such Acquired Assets or have a Material Adverse Effect on the marketability of the Acquired Assets.

4.14 **Inventories.** All of the Inventories are and will be items of a quality usable or salable in the ordinary and usual course of business. The value at which the Inventories are carried on the March 1998 Balance Sheet reflects an inventory valuation policy of Transferor which is consistent with industry practice and which is in accordance with GAAP, consistently applied.

4.15 **Outstanding Invoices.** Transferor's practice is to send a proposed invoice with an unsigned license agreement, which are subject to customer acceptance. Upon customer's execution of a license agreement, all invoiced amounts become due and payable in accordance with the terms of such invoices. Attached as Schedule 4.15 is a list of all such outstanding invoices, and the payment status thereof. Such Schedule 4.16 is a true and accurate accounting of all such invoices and amounts payable and owed. Schedules 2.1(c) and 4.23 contain a true and accurate accounting of all such license agreements.

4.16 **Licenses and Permits.** Transferor holds all consents, approvals, registrations, certifications, authorizations, permits and licenses of, and has made all filings with, or notifications to, all Governmental Entities pursuant to applicable requirements of all federal, state, local and foreign laws, ordinances, governmental rules or regulations applicable to the business, including, but not limited to, all such laws, ordinances, governmental rules or regulations relating to registration of the products of the Business (at their current level of development and use) and certification of the facilities of the Business. The Business is in compliance with all federal, state, local and foreign laws, ordinances, governmental rules and regulations relating to the products manufactured by the Business or otherwise related to the Business and Transferor has no reason to believe that any consents, approvals, authorizations, registrations, certifications, permits, filings or notifications that it has received or made to operate the Business are invalid or have been or are being suspended, canceled, revoked or questioned. There is no investigation or inquiry to which Transferor is a party or, to Transferor's knowledge, pending or threatened, relating to the Business and its compliance with applicable foreign, state, local or foreign laws, ordinances, governmental rules or regulations. Each such consent, approval, registration, certification, authorization, permit or license is transferable and shall be transferred to Transferee in accordance with the terms of this Agreement.

4.17 **Employees.**

(a) **Schedule 4.17** sets forth the names, home addresses, compensation levels, share option position, if any, and job titles of all of the Employees. All employees, consultants, officers, directors and shareholders of Transferor that have had access to the Acquired Assets are

parties to a written agreement (a "Confidentiality Agreement"), under which each such person or entity (i) is obligated to disclose and transfer to Transferor, without the receipt by such person of any additional value therefor (other than normal salary or fees for consulting services), all inventions, developments and discoveries which, during the period of employment with or performance of services for Transferor, he or she makes or conceives of either solely or jointly with others, that relate to any subject matter with which his or her work for Transferor may be concerned, or relate to or are connected with the Business, products or projects of Transferor, or involve the use of the time, material or facilities of Transferor, and (ii) is obligated to maintain the confidentiality of proprietary information of Transferor. None of Transferor's employees, consultants, officers or directors is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would conflict with their obligation to promote the interests of Transferor with regard to the Business or the Acquired Assets or that would conflict with the Business or the Acquired Assets. Neither the execution nor the delivery of this Agreement, nor the carrying on of the Business by its employees and consultants, will conflict with or result in a material breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such persons or entities are now obligated. It is currently not necessary nor will it be necessary for Transferor to utilize in the Business any inventions of any of such persons or entities (or people it currently intends to hire) made or owned prior to their employment by or affiliation with Transferor, nor is it or will it be necessary to utilize any other assets or rights of any such persons or entities (or people it currently intends to hire) made or owned prior to their employment with or engagement by Transferor, in violation of any registered patents, trade names, trademarks or copyrights or any other limitations or restrictions to which any such persons or entity is a party or to which any of such assets or rights may be subject. To the Transferor's knowledge, none of Transferor's employees, consultants, officers, directors or shareholders that has had knowledge or access to information relating to the Acquired Assets has taken, removed or made use of any proprietary documentation, manuals, products, materials, or any other tangible item from his or her previous employer relating to the Acquired Assets by such previous employer which has resulted in Transferor's access to or use of such proprietary items included in the Acquired Assets, and Transferor will not gain access to or make use of any such proprietary items in the Business, except to the extent that any such activities would not have a material adverse effect on the Acquired Assets or the Business.

(b) Except for the Confidentiality Agreements, there are no written or oral contracts of employment between Transferor and any Employee.

(c) The Transferor is not a party to a collective bargaining agreement with any trade union, the Transferor's employees are not members of a trade union certified as a bargaining agent with the Transferor and no proceedings to implement any such collective bargaining agreement or certifications are pending.

4.18 Employee Benefit and Compensation Plans. Except for liabilities expressly assumed by Transferee hereunder, Transferee will incur no liability with respect to, or on account of, and Transferor will retain any liability for, and on account of, any employee benefit plan of

Transferor, any of its Affiliates or any predecessor employer of any employee, including, but not limited to, liabilities Transferor may have to such employees under all employee benefit schemes, incentive compensation plans, bonus plans, pension and retirement plans, vacation, profit-sharing plans (including any profit-sharing plan with a cash-or-deferred arrangement) share purchase and option plans, savings and similar plans, medical, dental, travel, accident, life, disability and other insurance and other plans or arrangements, whether written or oral and whether "qualified" or "non-qualified," or to any employee as a result of termination of employment by Transferor as contemplated by this Agreement. Transferor has not, with respect to any employee, maintained or contributed to, or been obligated or required to contribute to, any retirement or pension plan or any employee benefit plan. Transferor is not a party to any collective bargaining agreement covering any employee and Transferor knows of no effort to organize any such employee as a part of any collective bargaining unit. The Transferor has complied with all of its obligations (including obligations to make contributions) in respect of the pension funds of which its employees are members, there is no outstanding liability of the Transferor or any of its Affiliates to any such funds and all such funds are fully funded to meet all potential claims for benefits by any and all such employees and any former employee.

4.19 Taxes. All Taxes have been or will be paid by Transferor for all periods (or portions thereof) prior to and including the Closing Date. Transferor and Principal and any other person required to file returns or reports of Taxes have duly and timely filed (or will file prior to the Closing Date) all returns and reports of Taxes required to be filed prior to such date, and all such returns and reports are true, correct, and complete. There are no liens for Taxes on any of the Acquired Assets. Transferor has complied with all record keeping and tax reporting obligations relating to income and employment taxes due with respect to compensation paid to employees or independent contractors providing services to the Business. Transferor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code. There are no pending or, to Transferor's or Principal's knowledge, threatened proceedings with respect to Taxes, and there are no outstanding waivers or extensions of statutes of limitations with respect to assessments of Taxes. No agreement or arrangement regarding compensation of any employee providing services to the Business provides for any payments which could result in a nondeductible expense to the Transferee pursuant to Section 280G of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code.

4.20 Compliance with Law. The operation of the Business has been conducted in all material respects in accordance with all applicable laws, regulations and other requirements of Governmental Entities having jurisdiction over the same.

4.21 Environmental Matters and Safety Laws. Transferor is not in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, and no material expenditures are or will be required in order to comply with any such existing statute, law or regulation. No Hazardous Materials (as defined below) are used or have been used, stored, or disposed of by Transferor, or to Transferor's knowledge after reasonable investigation, by any other person or entity on any property owned, leased or used by Transferor. For the purposes of the preceding sentence, "Hazardous Materials" shall mean (a) materials which are listed or otherwise defined as "hazardous" or "toxic" under any applicable local, state,

federal and/or foreign laws and regulations that govern the existence and/or remedy of contamination on property, the protection of the environment from contamination, the control of hazardous wastes, or other activities involving hazardous substances, including building materials or (b) any petroleum products or nuclear materials.

4.22 Material Contracts.

(a) Schedule 4.22 contains a list of all Contracts which are material to the Business ("Material Contracts"). "Material Contracts" shall include, without limitation, the following and shall be categorized in the Transferor Disclosure Schedule as follows:

(i) each Contract (other than routine purchase orders given and pricing quotes received in the ordinary course of the Business and covering a period of less than one year) for the purchase of software, inventory, spare parts, other materials or personal property with any supplier or for the furnishing of services to the Business under the terms of which Transferor, on behalf of the Business: (A) paid or otherwise gave consideration of more than \$5,000 in the aggregate, (B) is likely to pay or otherwise give consideration of more than \$5,000 in the aggregate, (C) is likely to pay or otherwise give consideration of more than \$5,000 in the aggregate over the remaining term of such contract or (D) cannot be canceled without penalty or further payment;

(ii) each customer contract and agreement of the Business (other than routine purchase orders, pricing quotes with open acceptance and other tender bids, in each case, entered into in the ordinary course of business and covering a period of less than one year) which (A) involved consideration of more than \$5,000 in the aggregate, (B) is likely to involve consideration of more than \$5,000 in the aggregate, (C) is likely to involve consideration of more than \$5,000 in the aggregate over the remaining term of the contract or (D) cannot be canceled without penalty or further payment;

(iii) (A) all distributor, manufacturer's representative, broker, franchise, agency and dealer contracts and agreements of the Business (specifying on a matrix, in the case of distributor agreements, the name of the distributor, product, territory, termination date and exclusivity provisions) and (B) all sales promotion, market research, marketing and advertising contracts and agreements of the Business which: (1) involved consideration of more than \$5,000 in the aggregate or (2) are likely to involve consideration of more than \$5,000 in the aggregate or (3) are likely to involve consideration of more than \$5,000 in the aggregate over the remaining term of the contract;

(iv) all management contracts with independent contractors or consultants (or similar arrangements) of the Business and which (A) involved consideration of more than \$5,000 in the aggregate, (B) are likely to involve consideration of more than \$5,000, or (C) are likely to involve consideration of more than \$5,000 in the aggregate over the remaining term of the contract;

(v) all contracts and agreements (excluding routine checking account overdraft agreements involving petty cash amounts) under which the Business has created,

incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness or under which the Business has imposed (or may impose) a security interest or lien on any of its assets, whether tangible or intangible, to secure indebtedness:

(vi) all contracts and agreements that limit the ability of any Person related to the Business, or any of its affiliates, to compete in any line of business or with any person or in any geographic area or during any period of time, or to solicit any customer or client;

(viii) all Contracts pursuant to which the Business has agreed to supply products to a customer at specified prices, whether directly or through a specific distributor, manufacturer's representative or dealer; and

(ix) all other Contracts (A) which are material to the Business or (B) the absence of which would have a Material Adverse Effect on the Business, or (C) which are believed by Transferor to be of unique value even though not material to the Business.

(b) Except as would not, individually or in the aggregate, have a Material Adverse Effect on the Business, each license, each Material Contract and each other material contract or agreement of the Business which would not have been required to be disclosed in Schedule 4.22 had such contract or agreement been entered into prior to the date of this Agreement, is a legal, valid and binding agreement, and none of the Material Contracts is in default by its terms or has been canceled by the other party; Transferor is not in receipt of any claim of default under any such agreement; and Transferor does not anticipate any termination or change to, or receipt of a proposal with respect to, any such agreement as a result of the transactions contemplated hereby. Transferor has furnished Transferee with true and complete copies of all such agreements together with all amendments, waivers or other changes thereto.

4.23 Litigation; Other Claims.

(a) There are no claims, actions, suits, inquiries, proceedings, or investigations against Transferor, or any of its officers, directors or shareholders, relating to the Business, the Acquired Assets or Transferor's employees which are currently pending or to Transferor's knowledge, threatened, at law or in equity or before or by any Governmental Entity, or which challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated hereby, nor is Transferor aware of any basis for such claims, actions, suits, inquiries, proceedings, or investigations; and no Governmental Entity has at any time challenged or questioned the legal right of Transferor to manufacture, offer or sell any of its products or services in the present manner or style thereof.

(b) There are no grievance or arbitration proceedings pending or to Transferor's knowledge, threatened, and there are no actual or to Transferor's knowledge, threatened strikes or work stoppages with respect to the Business, the Acquired Assets or Transferor's employees, nor is Transferor aware of any basis for such proceedings or events.

4.24 **Services and Products.** Each of the products and services produced, sold or provided by Transferor in connection with the Business is, and at all times has been, in compliance in all material respects with all applicable federal, state, local and foreign laws and regulations and is, and at all relevant times has been, fit for the ordinary purposes for which it is intended to be used and conforms in all material respects to any promises or affirmations of fact made in connection with the sale of such product or service.

4.25 **Defaults.** Transferor is not in default under or with respect to any judgment, order, writ, injunction or decree of any court or any Governmental Entity which could reasonably be expected to have a Material Adverse Effect on the Business or any of the Acquired Assets. There does not exist any default by Transferor or by any other Person, or event that, with notice or lapse of time, or both, would constitute a default under any agreement entered into by Transferor as part of the operations of the Business which could reasonably be expected to have a Material and Adverse Effect on the Business or the Acquired Assets, and no notices of breach thereof have been received by Transferor.

4.26 **Schedules.** The schedules describing the Acquired Assets are complete and accurate and describe the assets in the possession of, or used by Transferor in connection with the Business. The property listed in such Schedules constitutes all of the tangible and intangible property necessary for the conduct by Transferor of the Business.

4.27 **Full Disclosure.** Neither Transferor nor Principal is aware of any facts pertaining to the Acquired Assets which affect the Business or the Acquired Assets in a materially adverse manner or which will in the future affect the Business or the Acquired Assets in a materially adverse manner. Neither this Agreement nor any other agreement, exhibit, schedule or officer's certificate being entered into or delivered pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained in such document not misleading.

4.28 **Brokers and Finders.** Neither Transferor nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fee, commission or finder's fee in connection with the transactions contemplated by this Agreement.

4.29 **Fair Consideration; No Fraudulent Conveyance.** The transfer of the Acquired Assets pursuant to this Agreement is made in exchange for fair and equivalent consideration. Transferor is not now insolvent and will not be rendered insolvent by the sale, transfer and assignment of the Acquired Assets pursuant to the terms of this Agreement. Transferor is not entering into this Agreement or any of the other agreements referenced in this Agreement with the intent to defraud, delay or hinder its creditors and the consummation of the transactions contemplated by this Agreement, and the other agreements referenced in this Agreement, will not have any such effect. The transactions contemplated in this Agreement or any agreements referenced in this Agreement will not constitute a fraudulent conveyance, or otherwise give rise to any right of any creditor of Transferor to any of the Acquired Assets after the Closing.

4.29 **Insurance.** The Transferor Disclosure Schedule lists all insurance policies and fidelity bonds covering the Acquired Assets. There is no claim by Transferor pending under any

of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies and bonds. All premiums due and payable under all such policies and bonds have been paid and Transferor is otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). There is no threatened termination of, or material premium increase with respect to, any of such policies.

4.30 **Taxation.** The parties hereto intend that the transfer of Assets pursuant to this Agreement shall constitute a reorganization within the meaning of Section 368(a)(1)(c) of the Code and that this Agreement shall constitute a "plan of reorganization." Transferee has no plan or intent to take any action following the Closing which could reasonably be expected to cause the transfer of Assets to fail to qualify as a "Reorganization." Transferor and Principal have obtained independent tax advice with respect to this transaction and are satisfied with the tax consequences of this Agreement and the transactions contemplated herein and hereby.

4.31 **Capitalization.** The authorized capital stock of Transferor consists of: 10,000 shares of Common Stock, 10,000 of which are issued and outstanding prior as of Closing and held by the holders listed on Schedule 4.31 hereto and in the quantities listed thereon. There are no preemptive rights, options or warrants or other conversion privileges or rights presently outstanding to purchase any of the authorized but unissued stock of Transferor. Transferor is not obligated to repurchase any shares of its capital stock or any other securities. Transferor is not a party or subject to any agreement or understanding, and there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of Transferor.

4.32 **Securities Laws Matters.** With respect to the Consideration to be delivered hereunder, Principal and Transferor represent and warrant that: (a) they are capable of evaluating the merits and risks of their investment in Transferee, and by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by Transferee or any affiliate or selling agent of Transferee, directly or indirectly, have the capacity to protect their own interests in connection with the issuance of securities under this Agreement; (b) Principal and Transferor are acquiring the Consideration for investment for their own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof. Principal and Transferor understands that the Consideration has not been, and will not be, registered under the Securities Act of 1933, as amended (the "Securities Act"), by reason of a specific exemption therefrom, and that any such exemption would depend, among other things, upon the bona fide nature of the investment intent and the accuracy of such Principal's and Transferor's representations as expressed in this Agreement; (c) Principal and Transferor acknowledge that the Consideration must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available and is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about Transferee, the resale occurring not less than one year after a party has purchased and paid for the security to be

sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" (as provided by Rule 144(f)) and the number of shares being sold during any three-month period not exceeding specified limitations: (d) Principal understands that no public market now exists for any of the securities issued by Transferee, that Transferee has made no assurances that a public market will ever exist for its securities and that, even if such a public market exists at some future time, Transferee may not then be satisfying the current public information requirements of Rule 144; and (e) Principal and Transferor are accredited investors, within the meaning given such term under Regulation D promulgated under the Securities Act. The Purchaser and Transferor understand that the Consideration, and any securities issued in respect thereof or exchange therefor, may bear one or all of the following legends:

(x) "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

(y) Any legend required by the Blue Sky laws of any state to the extent such laws are applicable to the shares represented by the certificate so legended.

4.33 Acknowledgment with Respect to Prior Employees. Transferor and Principal hereby acknowledge that Transferee will not reimburse Transferor or any of its employees or agents for any liabilities including commissions relating to transactions entered into after the Closing Date, except as set forth in Schedule 2.3(a) and Schedule 4.33.

5. Representations and Warranties of Transferee

Each representation and warranty set forth below is qualified by any exception or disclosures set forth in the Transferee Disclosure Schedule attached hereto. In all other respects, each representation and warranty set out in this Section 5 is not qualified in any way whatsoever, will not merge on Closing or by reason of the execution and delivery of any agreement, document or instrument at the Closing, will remain in force on and after the Closing Date, is given with the intention that liability is not confined to breaches discovered before Closing, is separate and independent and is not limited by reference to any other representation or warranty or any other provision of this Agreement, and is made and given with the intention of inducing the Transferor to enter into this Agreement. Transferee represents and warrants to Transferor as follows:

5.1 Organization. Transferee is a corporation duly formed and validly existing under the laws of California, and has full corporate power and authority and the legal right to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Transferee pursuant hereto, and to consummate the transactions contemplated hereby and thereby.

5.2 Authority. The execution and delivery of this Agreement (and all other agreements and instruments contemplated hereunder) by Transferee, the performance by Transferee of its obligations hereunder and thereunder, and the consummation by Transferee of the transactions contemplated hereby and thereby have been duly authorized by all necessary action by the Board of Directors of Transferee, and no other act or proceeding on the part of Transferee or its shareholders is necessary to approve the execution and delivery of this Agreement and such other agreements and instruments, the performance by Transferee of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby. The signatory officers of Transferee have the power and authority to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Transferee pursuant hereto, to consummate the transactions hereby and thereby contemplated and to take all other actions required to be taken by Transferee pursuant to the provisions hereof and thereof. The Shares, when issued in compliance with the provisions of this Agreement, will be validly issued and will be fully paid and nonassessable and will have the rights, preferences and privileges described in the Restated Articles. The shares of Common Stock issuable upon conversion of the Shares have been duly and validly reserved and, when issued in compliance with the provisions of this Agreement and the Restated Articles will be validly issued, fully paid and nonassessable, and the Shares and such Common Stock will be free of any liens or encumbrances other than those created by or imposed upon the holders thereof through no action of Transferee; provided, however, that the Shares (and the Common Stock issuable upon conversion thereof) may be subject to restrictions on transfer under state and/or federal securities laws as set forth herein. The Shares are not subject to any preemptive rights or rights of first refusal.

5.3 Execution and Binding Effect. This Agreement has been duly and validly executed and delivered by Transferee and constitutes, and the other agreements and instruments to be executed and delivered by Transferee pursuant hereto, upon their execution and delivery by Transferee, will constitute (assuming, in each case, the due and valid authorization, execution and delivery thereof by Transferor), legal, valid and binding agreements of Transferee, enforceable against Transferee in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium, or other laws affecting the enforcement of creditors' rights generally or provisions limiting competition, and by equitable principles.

5.4 Consent and Approvals. There is no requirement applicable to Transferee to make any filing, declaration or registration with, or to obtain any permit, authorization, consent or approval of, any Governmental Entity as a condition to the lawful consummation by Transferee of the transactions contemplated by this Agreement and the other agreements and instruments to be executed and delivered by Transferee pursuant hereto, except for filings (a) which are referred to in the Transferor Disclosure Schedule, (b) the failure of making which would not have a Material Adverse Effect on the transactions contemplated hereby, or (c) to secure securities laws exemptions.

5.5 Capitalization. The authorized capital stock of the Transferee consists of: 30,000,000 shares of Common Stock, of which 5,220,999 shares are issued and outstanding prior to the Closing; and 3,500,000 shares of Preferred Stock, all of which have been designated

"Series A Preferred Stock," 2,500,000 of which are issued and outstanding prior to the Closing. All issued and outstanding shares have been duly authorized and validly issued, and are fully paid and nonassessable. The Series A Preferred Stock has the rights, preferences, privileges and restrictions set forth in the Transferee's Articles of Incorporation provided to counsel to the Transferor. All outstanding securities of Transferee were issued in compliance with applicable federal and state securities laws. Except as described herein, there are no preemptive rights, options or warrants or other conversion privileges or rights presently outstanding to purchase any of the authorized but unissued stock of Transferee. Transferee is not obligated to repurchase any shares of its capital stock or any other securities. Transferee has reserved: (a) 333,334 shares of Series A Preferred Stock and 666,666 shares of Common Stock for issuance hereunder, (b) 333,334 shares of Common Stock for issuance upon conversion of such Preferred Stock, and (c) 7,091,800 shares of its Common Stock for issuance to employees, directors and officers of, and consultants to, Transferee pursuant to options to purchase Common Stock outstanding as of the date hereof. The Series A Preferred Stock shall have the rights, preferences, privileges and restrictions set forth in the Restated Articles.

5.6 Litigation, etc. There are no actions, suits, proceedings, investigations or threat of such matters pending against Transferee or its properties (nor, to the best of Transferee's knowledge, after reasonable investigation, against officers of Transferee) before any court or governmental agency (nor, to the best of Transferee's knowledge, is there any threat thereof), which, either in any case or in the aggregate, might result in any material adverse change in the business or financial condition of Transferee or any of its properties or assets, or in any material impairment of the right or ability of Transferee to carry on its business as now conducted, or in any material liability on the part of Transferee, and none which questions the validity of this Agreement or any action taken or to be taken in connection herewith.

5.7 Employees. To the best of Transferee's knowledge, after reasonable investigation, no employee or consultant of Transferee is in violation of any term of any employment, employment contract, patent disclosure agreement or any other contract or agreement relating to the relationship of any such person with Transferee or any other party because of the nature of the business conducted or to be conducted by Transferee. Transferee does not have any collective bargaining agreements covering any of its employees. Transferee is not aware of any key employee of Transferee who has any plans to terminate his or her employment with Transferee.

5.8 Disclosure. Transferee has provided Principal and Transferor with all the information which they have requested for deciding whether to enter into this Agreement. To the best of the Transferee's knowledge, after reasonable investigation, no representation or warranty of Transferee contained in this Agreement and the Exhibits attached hereto contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

5.9 Subsidiaries. Magellan Communications, Inc. ("MCI"), is a wholly-owned subsidiary of Transferee. MCI is a corporation duly organized and existing under the laws of the

state of California and is in good standing under such laws. Except for MCI, Transferee has no other subsidiaries or affiliated companies and does not presently own or control, directly or indirectly, any interest in any other corporation, association or other business entity. Transferee owns all of the issued and outstanding shares of capital stock of MCI, and there is no obligation or commitment of Transferee or MCI to issue shares, options, warrants or other rights with respect to MCI to any person.

5.10 **Financial Statements.** Transferee has delivered its financial statements to the Transferor, consisting of: (i) a balance sheet and income statement as of, and for the fiscal year ended December 31, 1997 and (ii) an unaudited balance sheet and income statement as of, and for the one month period ended March 31, 1998 (collectively the "Financial Statements"). The Financial Statements are complete and correct in all material respects, present fairly the financial position and results of operations of Transferee at the dates and for the periods to which they relate, and show all material liabilities, absolute or contingent, of Transferee required to be recorded therein, except that they have not been audited, are subject to normal year-end audit adjustments and do not contain footnotes normally associated with audited financial statements. Except as set forth in the Financial Statements, Transferee has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to March 31, 1998, (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, individually or in the aggregate, are not material to the financial condition or operating results of Transferee and (iii) obligations under contracts or arrangements described in this Agreement.

5.11 **Changes.** Since March 31, 1998, there has not been:

- (a) Any material adverse change in the business, property, assets, liabilities, financial condition or results of operations of Transferee or its subsidiary;
- (b) Any change (individually or in the aggregate), except in the ordinary course of business, in the contingent obligations of Transferee or its subsidiary by way of guarantee, endorsement, indemnity, warranty or otherwise;
- (c) Any damage, destruction, or loss, whether or not covered by insurance, materially and adversely affecting the condition of the business, property, assets or liabilities of Transferee or its subsidiary;
- (d) Any waiver or compromise by Transferee or its subsidiary of a valuable right or of a material debt owed to it;
- (e) Any loans made by Transferee or its subsidiary to its employees, officers, or directors other than travel advances and other advances made in the ordinary course of business;
- (f) Any extraordinary increase in the compensation or benefits payable to any of Transferee's or its subsidiary's employees, officers or directors;

(g) Any declaration or payment of any dividend by Transferee or its subsidiary on its capital stock, any redemption, purchase or other acquisition of shares of its capital stock or any other distribution of assets of Transferee or its subsidiary, other than the repurchase of shares at cost from terminated employees or consultants pursuant to the terms of written stock purchase agreements calling for such repurchase;

(h) Any receipt of notice by Transferee or its subsidiary that there has been a cancellation of an order for its products or a loss of a customer of Transferee or its subsidiary, the cancellation or loss of which would materially adversely affect the condition, business, property, assets or liabilities of Transferee or its subsidiary;

(i) Any resignation or termination of employment of any key officer or employee of Transferee or its subsidiary and any impending resignation or termination of employment known by Transferee or its subsidiary of any key officer or employee of Transferee or its subsidiary in either case which, if consummated, would materially adversely affect the condition, business, property, assets or liabilities of Transferee or its subsidiary;

(j) Any labor dispute involving Transferee or its subsidiary or any of its employees;

(k) Any other event or condition of any character known to Transferee or its subsidiary that has materially and adversely affected Transferee's or its subsidiary's business or prospects;

(l) any amendment or other change to the Articles of Incorporation or Bylaws of Transferee or charter and organizational documents of its subsidiary (except as contemplated by this Agreement);

(m) any sale or other disposition of any right, title or interest in or to any assets or properties of Transferee or its subsidiary or any revenues derived therefrom other than in the ordinary course of business and consistent with past practice;

(n) any creation, incurrence or assumption of any indebtedness for money borrowed by Transferee or its subsidiary exceeding \$50,000;

(o) any capital expenditures by Transferee or its subsidiary in excess of \$50,000; or

(p) Any agreement or commitment by Transferee or its subsidiary to do any of the things described in this Section 5.12.

5.12 Patents and Other Intangible Assets.

(a) Transferee owns or possesses, has access to or believes it can become licensed on reasonable terms under, all patents, patent applications, trademarks, trade names, licenses, inventions, computer software, technical information and copyrights necessary for the

operation of its business as now conducted with no known infringement of or conflict with the rights of others including but not limited to all such rights to the Voice Response Unit and the Mariner software.

(b) There are no outstanding options, licenses or agreements of any kind relating to the matters listed in subsection 5.13(a), nor is Transferee bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other person or entity.

(c) Transferee has not received any communications alleging that Transferee has violated or, by conducting its business as proposed, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or any proprietary rights of any other person or entity, nor, to the best of Transferee's knowledge, is there any reasonable basis for such allegation.

(d) Transferee is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interests of Transferee or that would conflict with Transferee's business as presently conducted.

(e) Neither the execution nor delivery of this Agreement, nor the carrying on of Transferee's business by the employees of Transferee, nor the conduct of Transferee's business as presently conducted, will, to the best of Transferee's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

(f) Transferee, to the best of Transferee's knowledge, after reasonable investigation, does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by Transferee, the rights to which have not been fully assigned to Transferee.

5.13 Title to Properties; Liens and Encumbrances. Transferee has good and marketable title to all of its properties and assets, both real and personal, and has good title to all its leasehold interests, in each case subject to no mortgage, pledge, lien, security interest, conditional sale agreement, encumbrance or charge.

5.14 ERISA. Each of Transferee's employee benefit plans complies with all applicable local, state and federal statutory and administrative laws and regulations (including without limitation, the Employee Retirement Income Security Act of 1974) and Transferee has complied with all such laws and regulations in administering each of such plans.

5.15 Environmental Regulations. Except for failures which will not materially adversely affect the business of Transferee, Transferee has met, and continues to meet, all applicable local, state, federal and national environmental regulations and has disposed of its

waste products and effluents and/or has caused others to dispose of such waste products and effluents, in accordance with all applicable state, local, federal and national environmental regulations and in such a manner that no harm has resulted or will result to any of its respective employees or properties or to any other person or entities or their properties.

5.16 Confidentiality and Inventions Agreements. Each employee of Transferee has executed a Confidentiality and Inventions Agreement with Transferee. Transferee, after reasonable investigation, is not aware that any of its employees, officers or consultants are in violation of such agreements.

5.17 Insurance. Transferee maintains fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed. Transferee maintains products liability and errors and omissions insurance in amounts customary for companies similarly situated.

5.18 Permits. Transferee has all franchises, permits, licenses and any similar authority as necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect (financially or otherwise) the business, properties, assets, liabilities or prospects of Transferee and believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted (as contemplated in the Business Plan). Transferee is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

5.19 Distributions. There has been no declaration or payment by Transferee of any dividend, nor any distribution by Transferee of any assets of any kind, to any class or series of its capital stock.

5.20 Minute Books. The minute books of Transferee contain a complete summary of all meetings of directors and shareholders since the time of incorporation and reflect all transactions referred to in such minutes accurately in all material respects.

5.21 Compliance with Other Instruments, None Burdensome, etc. Transferee is not in violation of any term of its Articles of Incorporation or Bylaws, each as amended and in effect on and as of the Closing, or in any material respect of any material term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment or decree, order, statute, rule or regulation applicable to Transferee. The execution, delivery and performance of and compliance with this Agreement, and the issuance of the Consideration and the Common Stock issuable upon conversion of the convertible Consideration, have not resulted and will not result in any material violation of, or conflict with, or constitute a material default under, or result in the creation of, any mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of Transferee; and there is no such violation or default which materially and adversely affects the business of Transferee as conducted or as proposed to be conducted, or any of Transferee's properties or assets.

5.22 Offering. Subject to the accuracy of the Transferor's and Principal's representations in Section 4 of this Agreement and in written responses to Transferee's inquiries,

the offer, sale and issuance of the Consideration to be issued in conformity with the terms of this Agreement and the issuance of the Common Stock to be issued upon conversion of the convertible Consideration, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "Securities Act").

5.23 Brokers or Finders; Other Offers. Transferee has not incurred, and will not incur, directly or indirectly, as a result of any action taken by Transferee, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

5.24 No Conflict of Interest. Transferee is not indebted, directly or indirectly, to any of its officers or directors or to their respective spouses or children, in any amount whatsoever other than in connection with expenses or advances of expenses incurred in the ordinary course of business or relocation expenses of employees. None of said officers or directors, or any members of their immediate families are indebted to Transferee (other than in connection with purchases of Transferee's stock) or, to the best of Transferee's knowledge, have any direct or indirect ownership interest in any firm or corporation with which Transferee is affiliated or with which Transferee has a business relationship, or any firm or corporation which competes with Transferee except that officers, directors and/or shareholders of Transferee may own stock in publicly traded companies which may compete with Transferee. No officer or director or any member of their immediate families, is, directly or, to the best of Transferee's knowledge, indirectly, interested in any material contract with Transferee. Transferee is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

5.25 Transferee's Contracts. All of the contracts and agreements with expected receipts or expenditures in excess of \$50,000 or involving a license or grant of rights to or from Transferee or its subsidiary involving patents, trademarks, copyrights or other proprietary information applicable to the business of Transferee or its subsidiary other than non-disclosure agreements signed in the ordinary course with prospective investors, suppliers, customers and licensees concerning prospective relationships, to which Transferee or its subsidiary is a party as of the date of the Closing are listed on the Transferee Disclosure Schedule. To the best of Transferee's knowledge, all such contracts and agreements are legally binding, valid and in full force and effect in all material respects, and Transferee is not aware of reduced activity relating to any such contract or agreement (other than in the ordinary course of business) by any of the parties to any such contract or agreement.

5.26 Agreements; Action. Transferee has not engaged in the past three months in any discussion (i) with any representative of any corporation or corporations regarding the merger of Transferee with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or individual regarding the transfer, conveyance or disposition of all or substantially all of the assets of Transferee or a merger, consolidation or other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of Transferee would be disposed of (other than with respect to the financing that is the subject of this Agreement), or (iii) regarding any other form of liquidation, dissolution or winding up of Transferee.

5.27 Small Business Stock. To the best of Transferee's knowledge, the Consideration qualifies as "Qualified Small Business Stock" as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended as of the date hereof.

6. Covenants.

6.1 Access to Information. At all times following the Closing, each party shall provide the other party (at such other party's expense) with such reasonable assistance, including the provision of available relevant records or other information and reasonable access to and cooperation of any employees, as may be reasonably requested by either of them in connection with the preparation of any financial statement or tax return, any audit or examination by any taxing authority, or any judicial or administrative proceeding relating to liability for Taxes.

6.2 Post-Closing Access to Information. If, after the Closing Date, in order properly to operate the Business or prepare documents or reports required to be filed with governmental authorities or Transferee's financial statements, it is necessary that Transferee obtain additional information within Transferor's and/or Principal's possession relating to the Acquired Assets or the Business, Transferor or Principal, as the case may be, will furnish or cause its representatives to furnish such information to Transferee. Notwithstanding the foregoing, Transferee acknowledges that Transferor may liquidate shortly after the Closing Date and thereafter may not be able to provide access to such information after such liquidation, and Principal therefore agrees after the Closing Date to maintain all such information in Principal's possession relating to the Acquired Assets and the Business in secure space to be provided by Transferee.

6.3 Post-Closing Efforts and Cooperation.

(a) Transferor and Principal agree that, if reasonably requested by Transferee, they will cooperate with Transferee, at Transferee's expense, in enforcing the terms of any agreements between Transferor and any third party involving the Business, including without limitation terms relating to confidentiality and the protection of intellectual property rights. In the event that Transferee is unable to enforce its intellectual property rights against a third party as a result of a rule or law barring enforcement of such rights by a transferee of such rights, Transferor and Principal agree to reasonably cooperate with Transferee by assigning to Transferee such rights as may be required by Transferee to enforce its intellectual property rights in its own name. If such assignment still does not permit Transferee to enforce its intellectual property rights against the third party, Transferor and Principal agree to initiate proceedings against such third party in Transferor's and/or Principal's name, provided that Transferee shall be entitled to participate in such proceedings and provided further that Transferee shall be responsible for the expenses of such proceedings.

(b) Transferor and Principal agree to use their best efforts to assign to Transferee all of their rights under the Contracts and the Material Contracts to Transferee promptly after the Closing to the extent such rights were not assigned to Transferee upon the Closing. Transferee shall make no claims against Transferor for any liabilities arising out of Transferor's inability to obtain any required third party consent to assign a Material Contract after Transferor's best efforts to obtain such consent.

otherwise in any business or activity which is the same as or substantially similar to the Business or any business in the Certain Industries or any material part of thereof or provides services to any business or businesses engaged in the Business or business in the Certain Industries (collectively, the "Restricted Business"):

(ii) solicit, canvass, induce or encourage directly or indirectly any employee of Transferee to leave the employment of Transferee:

(iii) solicit, canvass, approach or accept any offer from any person or entity who was at any time during the 24 months immediately preceding the Closing Date a customer or supplier of the Business with a view to establishing a relationship with or obtaining the patronage of that person or entity in a Restricted Business; or

(iv) interfere or seek to interfere, directly or indirectly, with any relationship between Transferee and any client, customer, employee or supplier of the Business.

(b) If any of the separate and independent covenants and restraints referred to in clause (a) of this Section 6.8 are or become invalid or unenforceable for any reason then that invalidity or unenforceability will not affect the validity or enforceability of any other separate and independent covenants and restraints.

(c) If any prohibition or restriction contained in clause (a) of this Section 6.8 is judged to go beyond what is reasonable in the circumstances, but would be judged reasonable if that activity was deleted or that period or area was reduced, then the prohibitions or restrictions apply with that activity deleted or period or area reduced by the minimum amount necessary.

(d) Transferor and Principal acknowledge that:

(i) the prohibitions and restrictions contained in clause (a) of this Section 6.8 are reasonable and necessary; and

(ii) Transferor and Principal has received valuable consideration for agreeing to the covenants in clause (a) of this Section 6.8.

(e) Transferor and Principal will treat and hold as confidential (and not disclose or provide access to any person or entity) and refrain from using for any purpose whatsoever any information, regardless of format, relating to intellectual property of Transferee and the Business or to any product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, details of client or consultant contracts, operations methods, product development techniques, business acquisition plans, new personnel acquisition plans of Transferee or any other confidential or proprietary information with respect to Transferee or the Business (collectively, "Confidential Information"); provided that neither Transferor nor Principal shall not be liable hereunder for disclosure or use of any Confidential Information if such Confidential Information: (i) is within the public domain at the time it is disclosed or used or comes within the public domain as a result of a permissive disclosure or use

6.4 **Post-Closing Megna Indemnification.** Transferor and Principal shall jointly and severally protect, defend, indemnify and hold harmless Transferee and Transferee's Affiliates, officers, directors, employees, representatives and agents (each of the foregoing Persons is hereinafter referred to individually as an "Indemnified Person" and collectively as "Indemnified Persons") from and against any and all payments, losses, costs, damages, liabilities, fees (including without limitation attorneys' fees) and expenses (collectively, the "Damages"), that any of the Indemnified Persons incurs or reasonably anticipates incurring by reason of or in connection with any claim, demand, action or cause of action that may arise in connection with and/or relating to Megna's Employment Agreement dated June 1, 1995 between Transferor and Megna.

6.5 **No Post-Closing Retention of Copies.** Immediately after the Closing, Transferor shall deliver to Transferee or destroy copies of Acquired Assets in Transferor's possession that are in addition to copies delivered to Transferee as part of the Closing, whether such copies are in paper form, on computer media or stored in another form; provided, however, that Transferor may retain and use copies of financial books and records relating to the Business as well as other documents required by law to be kept by Transferor for the sole purpose of preparing its statutory accounts. The Transferor shall not be permitted to use the financial books and records of the Business for any other reason.

6.6 **Public Announcements.** On and prior to the Closing Date, Transferee and Transferor shall advise and confer with each other prior to the issuance of any reports, statements or releases concerning this Agreement (including the exhibits and schedules hereto) and the transactions contemplated herein. Neither Transferee nor Transferor will make any public disclosure with respect to the Closing unless both parties agree on the text and timing of such public disclosure; provided, however, that nothing contained herein shall prevent either party at any time from furnishing any information to any Governmental Entity.

6.7 **Post-Closing Actions.** Subsequent to the Closing Date, Transferor and Principal shall, from time to time, execute and deliver, upon the request of Transferee, all such other and further materials and documents and instruments of conveyance, transfer or assignment as may reasonably be requested by Transferee to effect, record or verify the transfer to, and vesting in Transferee, of Transferor's right, title and interest in and to the Acquired Assets, free and clear of all Liens, in accordance with the terms of this Agreement.

6.8 **Non-Competition Agreements:**

(a) In consideration of the Transferee entering into this Agreement, Transferor and Principal separately undertake that for three (3) years after the Closing Date and within the telecommunications and telecommunications-related industries (the "Certain Industries") neither Principal nor Transferor will:

(i) participate, assist or otherwise be directly or indirectly involved or concerned, financially or otherwise, as a member, shareholder or unitholder (other than of less than 1% of the outstanding equity securities of any corporation), director, consultant, adviser, contractor, principal, agent, manager, beneficiary, partner, associate, trustee, financier or

by an unrelated third party without any responsibility or involvement of Transferee; or (ii) is disclosed pursuant to the written instructions of Transferee.

(f) Transferor, Principal and Transferee acknowledge and agree that it will be difficult to compute the amount of damage or loss to Transferee if Transferor and/or Principal violated any of their agreements under this Section 6.8, that Transferee will be without an adequate legal remedy if Transferor and/or Principal violated the provisions of this Section 6.8, and that any such violation may cause substantial irreparable injury and damage to Transferee not fully compensable by monetary damages. Therefore, Transferor, Principal and Transferee agree that in the event of any violation by Transferor or Principal of this Section 6.8, Transferee shall be entitled (i) to recover from Transferor or Principal, as the case may be, monetary damages, (ii) to obtain specific performance, injunctive or other equitable relief, of either a preliminary or permanent type, and (iii) to seek any other available rights or remedies at law or in equity which may be exercised concurrently with the rights granted hereunder.

6.9 Permits. Transferor and Principal will assist Transferee in obtaining any licenses, permits or authorizations required for carrying on the Business but which are not transferable.

6.10 Bulk Sales Law. Transferor shall make all such filings as are required in connection with the Bulk Sales laws of Hawaii, including, without limitation, the filings and public notice requirements of the Hawaii Uniform Commercial Code.

6.11 Taxes. Transferor shall be responsible for paying, shall promptly discharge when due, and shall reimburse, indemnify and hold harmless Transferee from, any sales or use, S-Corporation entity, transfer, real property gains, excise, stamp, or other similar Taxes arising from, imposed on or attributable to the transactions contemplated by this Agreement. Transferor and Principal have obtained independent tax advice with respect to this transaction and are satisfied with the tax consequences of this transaction and the Agreement. Real and personal and valorem property taxes attributable to the Acquired Assets shall be apportioned at the Closing on a daily basis and Transferee shall be responsible for all such taxes attributable to the period after the Closing. Sales taxes through the Closing attributable to the Acquired Assets shall be paid by Transferor except as otherwise listed in Assumed Liabilities.

6.12 Registration Rights. The Preferred Shares will be granted registration rights comparable to those granted by Transferee to new investors in Transferee's first round of equity financing in excess of \$500,000 following the date hereof. The Common Shares will be granted registration rights equal to the most favorable registration rights of any other holder of Common Stock of Transferee as of the Closing Date. The parties hereto acknowledge and agree that neither the Preferred Shares nor the Common Shares nor the shares underlying the Options (as defined in Section 7.6 below) have been registered under the Securities Act of 1933, as amended but have been issued pursuant to exemptions from registration thereunder. This Agreement creates no independent obligation of Transferee to register such shares. The registration rights described hereunder will be transferrable to the holder of the shares upon any transfer, dividend or distribution of such shares to the Transferor's shareholders, subject to the execution by such holder of the agreement granting such registration rights and the execution by such holder of an

agreement to be bound by the terms of this Agreement including the "Market Stand Off" Agreement set forth in Section 6.15 below.

6.13 Loan. For a period of twelve (12) months from the date of this Agreement, Transferor and/or Principal shall have the right to borrow a total of up to \$100,000 from Transferee, secured by 50,000 Preferred Shares from the Immediate Consideration pursuant to a Loan and Security Agreement reasonably satisfactory to Transferee and Transferor (the "Loan"). Such loan shall be for a period mutually acceptable to Transferee and Transferor not to exceed twelve (12) months and shall be at the rate of eight percent (8%) interest per annum. If it is determined by Transferor, in Transferor's sole discretion, that this Loan would constitute "boot" or otherwise affect the tax-free status of the transaction contemplated by this Agreement, then this Section 6.13 shall be null and void and of no further force or effect.

6.14 Transfer of Consideration. Subject to the escrow provisions of Section 8 below, at Transferor's request Transferee agrees to take all reasonable steps to permit transfer of title to the shares constituting the Consideration in connection with any transfer, dividend or distribution of the Consideration to the shareholders of Transferor and to make the appropriate notation in the share registry of the Transferee, provided (i) such shareholders agree to be bound by the terms of this Agreement, (ii) the capital stock constituting the Consideration is restricted under the Securities Act, (iii) Transferee is provided with a written opinion of legal counsel who shall be, and whose legal opinion shall be, reasonably satisfactory to the Transferee addressed to the Transferee, to the effect that the proposed transfer, dividend or distribution may be effected without registration under the Securities Act and (iv) all such shares are stamped or otherwise imprinted with the legends set forth in Section 4.32 hereof.

6.15 "Market Stand-Off" Agreement. Principal and Transferor hereby agree that during the one hundred eighty (180) day period following the effective date of a registration statement of Transferee filed under the Securities Act in connection with Transferee's initial public offering of securities, it shall not, to the extent requested by Transferee and Transferee's underwriters, sell, offer to sell, or otherwise transfer or dispose of any capital stock of Transferee held by Principal and Transferor at any time during such period except capital stock included in such registration. To enforce the foregoing covenant, Transferee may impose stop-transfer instructions with respect to the capital stock held by Principal, Transferor and Transferor's shareholders (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period. Principal and Transferor agree to execute the form of such market stand-off agreement as may be reasonably requested by the underwriters.

6.16 Opinion of Counsel. Transferee shall be provided an opinion of its legal counsel, Venture Law Group, substantially in the form of Exhibit C hereto. Transferor shall be provided an opinion of its legal counsel, Carlsmith, Ball, Wichman, Case & Ichiki substantially in the form of Exhibit D hereto.

7. Employee Matters

7.1 Transferred Employees

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(a) **Offer of Employment.** Subject to and in accordance with the provisions of this Section 7, Transferee will offer employment to at least a majority of the employees who are employed by Transferor in the Business as of the date of this Agreement (the "**Employees**"). with such individuals selected and determined in the Transferee's sole discretion. Transferor and Principal agree that they will cooperate with Transferee to identify those employees of Transferor who are necessary for the conduct of the Business. After the Closing Date, Transferee shall have the right to contact any or all of the Employees for the purposes of making offers of employment with Transferee and receiving written acceptances of such employment (in each case contingent on consummation of the transactions contemplated by this Agreement). Transferee shall hire those Employees to whom it has made an offer in accordance with this Section 7 and who accept such offer in the manner and within the time frame reasonably established by Transferee. Each such Employee who is employed by Transferor on the Closing Date and who actually transfers to employment with Transferee (or any Affiliate designated by Transferee) at or after the Closing Date as a result of an offer of employment made by Transferee is hereafter referred to as a "**Transferred Employee.**" All such Transferred Employees will be offered employment pursuant to Transferee's standard offer letter and shall be required to execute Transferee's standard Employee Confidential Inventions and Employment Agreement. Transferred Employees shall not include any person on a disability leave of more than twenty-six (26) weeks. Transferee shall not be obligated to hire any employee unless an offer of employment is subsequently made to, and accepted by, such employee; in addition, Transferee shall have no obligation to hire any employees of Transferor after the Closing Date except as otherwise described in this Section 7.1.

(b) **Transition.** The terms of employment with Transferee shall be as mutually agreed to between each Transferred Employee and Transferee, subject to the provisions of this Section 7.1 and provided that such terms shall generally be no less favorable than such Transferred Employee's aggregate compensation and benefits package from Transferor on the date of this Agreement. Transferee shall have no obligation with respect to payments of salary, compensation, wages, health or similar benefits, commissions, bonuses (deferred or otherwise), severance, stock or stock options or any other sums due to any Transferred Employee that accrued before the Closing Date, except as described on Schedule 2.3(a). Transferor will be fully responsible for all amounts payable to any employee, including (without limitation) all termination payments, redundancy compensation, severance pay, accrued vacation pay and other amounts payable in respect of the termination of employment of any employee in connection with the transfer of the Acquired Assets to the Transferee, except as described on Schedule 2.3(a). In addition, Transferor will be fully responsible for all amounts owing to Transferred Employees prior to the later of (i) the Closing or (ii) their date of hire by Transferee, except as described on Schedule 2.3(a).

7.2 **Compensation and Benefits of Transferred Employees.** Coverage for Transferred Employees under Transferee's compensation and benefit plans and other programs shall commence as of 12:01 a.m. on the day after the later of (i) Closing Date or (ii) their date of hire by Transferee. Transferee shall be free to establish its own employee benefit plans; except as otherwise set out in Section 7 or listed among the Assumed Liabilities, Transferee shall have no obligation to offer benefit plans of the same type or with terms similar to or better than the terms of Transferor's current employee benefit plans.

7.3 Other Employees of the Business. With respect to each employee of the Business as of the Closing Date who is not a Transferred Employee (each a "Non-Transferred Employee"), except as otherwise agreed by Transferee. Transferor agrees to either terminate such Non-Transferred Employee's employment with Transferor, effective prior to the Closing or offer such Non-Transferred Employee continued employment with Transferor other than in the Business. Transferor further acknowledges that the Non-Transferred Employees shall not be employees of Transferee after the Closing.

7.4 No Right to Continued Employment or Benefits. No provision in this Agreement shall create any third party beneficiary or other right in any Person (including any beneficiary or dependent thereof) for any reason, including, without limitation, in respect of continued, resumed or new employment with Transferor or Transferee (or any Affiliate of Transferor or Transferee) or in respect of any benefits that may be provided, directly or indirectly, under any plan or arrangement maintained by Transferor, Transferee or any Affiliate of Transferor or Transferee. Notwithstanding the foregoing, to the extent that the Key Employees continue to be employed by Transferee (with no obligation on the part of Transferee to continue such employment), the Key Employees shall be paid contingent bonuses, if earned, of \$5,000 per year for calendar years 1997, 1998, 1999 and 2000 provided they remain employees of Transferee through December 31, 2000. Except as otherwise expressly provided in this Agreement, Transferee is under no obligation to hire any employee of Transferor, provide any employee with any particular benefits, or make any payments or provide any benefits to those employees of Transferor whom Transferee chooses not to employ.

7.5 No Solicitation or Hire by Transferor. For a period of three years after the Closing, Transferor will not solicit any Transferred Employee for employment. For purposes of this Section 7.5, the term "solicit" shall not include the following activities by Transferor: (i) advertising for employment in any bulletin board (including electronic bulletin boards), newspaper, trade journal or other publication available for general distribution to the public without specific reference to any particular employees; (ii) participation in any hiring fair or similar event open to the public not targeted at Transferee's employees; and (iii) use of recruiting or employee search firms that have been instructed by Transferor not to target any Transferred Employee.

7.6 Stock Options. Promptly after the Closing, Transferee will issue stock options to purchase an aggregate of 500,000 shares of Transferee's Common Stock (the "Options") in the following amounts: 120,000 shares in equal amounts of 30,000 shares to each of the Key Employees and 380,000 shares to Principal. The Options will be subject to vesting over three years on a basis of 126,666 after twelve months in the case of Principal and 7,500 for each of the Key Employees after twelve months. The balance shall vest on a monthly schedule for each individual over the following two years (i.e., 1/24th of the shares will be vested at the end of each month thereafter for 24 months).

7.7 Principal. Effective as of the Closing, Principal shall be offered mutually at-will employment with Transferee pursuant to Transferee's standard offer letter at the rate of \$12,500 per-month (plus stock options described in Section 7.6 above). Principal and all Transferred

Employees shall sign Transferee's standard Employee Confidential Inventions and Employment Agreement on or prior to the Closing.

8. **Escrow and Indemnification**

8.1 **Survival of Representations and Warranties.** All covenants to be performed prior to the Closing Date, and all representations and warranties of Transferee, Transferor and Principal in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the consummation of the transactions contemplated hereby and continue until the date 24 months from the date of the Closing at which time the representations and warranties shall terminate (the "Escrow Termination Date"); provided that if any claims for indemnification have been asserted with respect to any such representations, warranties and covenants prior to the Escrow Termination Date, the representations, warranties and covenants on which any such claims are based shall continue in effect until final resolution of any claims, and provided, further, that representations, warranties and covenants relating to Taxes shall survive until 30 days after expiration of all applicable statutes of limitations relating to such Taxes. All covenants to be performed after the Closing Date shall continue indefinitely.

8.2 **Indemnification.** Subject to the limitations set forth in this Section 8, from and after the Closing Date, Transferor and Principal shall jointly and severally protect, defend, indemnify and hold harmless Transferee and Transferee's Affiliates, officers, directors, employees, representatives and agents (each of the foregoing Persons is hereinafter referred to individually as an "Indemnified Person" and collectively as "Indemnified Persons") from and against any and all losses, costs, damages, liabilities, fees (including without limitation attorneys' fees) and expenses, such losses, costs, damages, liabilities, fees and expenses to be calculated after taking into account any tax benefits realized by Transferee in connection with the indemnified event (collectively, the "Damages") that any of the Indemnified Persons incurs or reasonably anticipates incurring by reason of or in connection with any claim, demand, action or cause of action alleging misrepresentation, breach of, or default in connection with, any of the representations, warranties, covenants or agreements of the Transferor contained in this Agreement, including any exhibits or schedules attached hereto, known to Transferee prior to the Escrow Termination Date. The Escrow Consideration shall be the sole and exclusive remedy (against both Principal and Transferor) for such indemnification except for (i) Damages resultant from fraud or intentional misrepresentation by Transferor or Principal, (ii) Damages resulting from a breach of the representations and warranties contained in Section 4.11 of this Agreement solely to the extent such Damages arise from a claim or claims of infringement by former or current employees of Transferor, third party consultants to Transferor, and licensors/licensees of any protectable intellectual property right of Transferor and (iii) Damages resulting from the indemnification provisions of Section 6.4 of this Agreement. Notwithstanding anything to the contrary in this Section 8.2, the liability of the Transferor and Principal for breaches of representations and warranties described in the preceding clause (ii) shall be limited to fifty percent (50%) of the Consideration.

8.3 **Damages Threshold.** Notwithstanding the foregoing, Transferee may not receive any amount of the Escrow Consideration from the Escrow Fund unless and until a certificate

signed by an officer of Transferee (an "Officer's Certificate") identifying Damages in the aggregate amount in excess of \$10,000 has been delivered to the Escrow Agent and such amount is determined pursuant to this Section 8 to be payable, in which case Transferee shall receive Escrow Consideration equal in value to the full amount of such Damages without deduction. In determining the amount of any Damages attributable to a breach, any materiality standard contained in a representation, warranty or covenant of Transferee shall be disregarded.

8.4 Escrow Period. Subject to the following requirements, the Escrow Consideration shall be retained by the Escrow Agent until the Escrow Termination Date. Upon the Escrow Termination Date, the Escrow Agent shall deliver to the Transferor all remaining Escrow Consideration provided, however, that the amount of Escrow Consideration, which, in the reasonable judgment of Transferee, subject to the objection of the Escrow Agent and the subsequent arbitration of the claim in the manner provided in the Escrow Agreement, is necessary to satisfy any unsatisfied claims specified in any Officer's Certificate delivered to the Escrow Agent prior to the Escrow Termination Date with respect to facts and circumstances existing on or prior to the Escrow Termination Date shall remain in the possession of the Escrow Agent until such claims have been resolved. As soon as all such claims have been resolved, any remaining Escrow Consideration not required to satisfy such claims shall be distributed to the Transferor.

8.5 Method of Asserting Claims. All claims for indemnification by the Transferee or any other Indemnified Person pursuant to this Section 8 shall be made in accordance with the provisions of the Escrow Agreement.

8.6 Transferee Indemnification. Transferee acknowledges that (a) Transferor is currently expecting to enter into an agreement with IEX, the latest draft of which is attached hereto as Schedule 8.6.1 (the "IEX Contract") and that Transferor has accepted a deposit of \$50,000 from IEX (the "Deposit") in anticipation of entering into the IEX Contract, and (b) Transferor has entered into a Nondisclosure Agreement with XNT, which is attached hereto as Schedule 8.6.2 (the "XNT Agreement"). Transferee agrees to work with IEX in good faith to enter into a commercially reasonable relationship. Transferee agrees to assume the obligations of Transferor under the XNT Agreement. In the event that Transferee subsequently enters into any agreement with IEX, Transferee agrees to use its good faith efforts to have such agreement supersede any prior agreements between and Transferor and IEX in their entirety. Notwithstanding anything herein to the contrary, Transferor and Principal represent that they have no agreements or commitments with IEX other than pursuant to the potential, but unsigned, IEX Contract. To the extent that Transferor or Principal is required to return any portion of the Deposit, Transferee shall reimburse Transferor or Principal for any refunded amounts. Transferee further agrees to defend Transferor against (i) any Damages arising out of Transferee's failure to fulfill its obligations under this Section 8.6, (ii) any Damages to Transferor or Principal resulting solely from the refusal of IEX to enter into a commercially reasonable relationship with Transferee, (iii) if Transferee enters into an agreement with IEX, any Damages to Transferor or Principal resulting from the failure of such agreement to supersede the proposed, but unsigned, IEX Contract, and (iv) any Damages to Transferor or Principal arising out of Transferee's breach of the XNT Agreement, provided in each of the above cases that: (A) the aggregate amount of

Damages arising therefrom exceeds \$5,000. (B) Transferor and Principal have all acted in good faith to facilitate a commercially reasonable relationship between IEX and Transferee. (C) Neither Transferor nor Principal has breached the terms of this Section 8.6. nor any agreement or commitment to IEX not contained in the proposed, but unsigned, IEX Contract and (D) Transferor and Principal agree to cooperate in the defense of such claim without charge to Transferee. In no event shall Transferee's aggregate liability under this section exceed the monetary value of the Consideration as of the date hereof as calculated pursuant to Section 3(e) of the Escrow Agreement.

9. Miscellaneous.

9.1 Amendments and Waivers. Any term of this Agreement may be amended or waived with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 9.1 shall be binding upon the parties and their respective successors and assigns.

9.2 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.3 Governing Law; Jurisdiction. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Each of the parties to this Agreement consents to the exclusive jurisdiction and venue of the courts of the state and federal courts of Santa Clara County, California.

9.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

9.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.6 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or on Exhibit A hereto, or as subsequently modified by written notice, and (a) if to Transferee, with a copy to Tae Hea Nahm, Venture Law Group, A Professional Corporation, 2800 Sand Hill Road, Menlo Park, California 94025 or (b) if to Transferor, with a copy to Aaron Alter, Wilson, Sonsini, Goodrich & Rosati, Professional Corporation, Palo Alto, California 94304.

9.7 **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.


9.8 **Entire Agreement.** This Agreement and the documents referred to herein are the product of all of the parties hereto, and constitute the entire agreement between such parties pertaining to the subject matter hereof and thereof, and merge all prior negotiations and drafts of the parties with regard to the transactions contemplated herein and therein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

9.9 **Advice of Legal Counsel.** Each party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.


[Signature pages follow]

This Agreement has been duly executed and delivered by the duly authorized officers of Transferor and Transferee as of the date first above written.

TRANSFEEE: **MAGELLAN NETWORK SYSTEMS, INC.**

By: 
Name: R Marangell 4-30-98
Title: President

TRANSFEROR: **ACCESS COMMUNICATIONS, INC.**

By: 
Name: MICHAEL S. COLBERT
Title: President

PRINCIPAL: 
MICHAEL S. COLBERT

EXHIBITS

EXHIBIT A Escrow Agreement
EXHIBIT B Bill of Transfer
EXHIBIT C Opinion of Transferee's Counsel
EXHIBIT D Opinion of Transferor's Counsel

Transferor and Principal Disclosure Schedule
Transferee Disclosure Schedule

**ACCESS COMMUNICATIONS INC.
TRANSFEROR AND PRINCIPAL DISCLOSURE SCHEDULES
PERSUANT TO ASSET TRANSFER AGREEMENT.**

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2.1.h - Transferors Copyrights, Trade Secrets, and Trademarks

Trademarks - Granted State of Hawaii Trademark on AccessAbility
Did not Apply for US Federal Trademark on AccessAbility
Researched and found no conflicts
Applied for US Federal Trademark on Ability

Copyrights - No registered copyrights

Patents - None

Trademarks / Copyright Applications Legal Counsel
Martin Hsia - Cades, Schutte, Fleming, & Wright - (808) 521-9200