

06-17-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies): 6-11-02 @Track Communications, Inc. [] Individual(s) [] Association [] General Partnership [] Limited Partnership [X] Corporation-State Delaware [] Other Additional name(s) of conveying party(ies) attached? [] Yes [X] No

2. Name and address of receiving party(ies) Name: Aether Systems, Inc. Internal Address: Office of the General Counsel Street Address: 11460 Cronridge Drive City: Owings Mills State: MD Zip: 21117 [] Individual(s) citizenship [] Association [] General Partnership [] Limited Partnership [X] Corporation-State Delaware [] Other If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [] Yes [X] No

3. Nature of conveyance: [X] Assignment [] Merger [] Security Agreement [] Change of Name [] Other Execution Date: March 15, 2002

4. Application number(s) or registration number(s): (4 total) A. Trademark Application No.(s) 76300091 76300077 B. Trademark Registration No.(s) 76300083 76298888 Additional number(s) attached [] Yes [X] No

6. Total number of applications and registrations involved: 4

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Kris R. Keeney, Esq. Digitalaw Internal Address: Street Address: 1015 East Main Street, 3rd Floor City: Richmond State: VA Zip: 23219

7. Total fee (37 CFR 3.41).....\$ 115 [X] Enclosed [] Authorized to be charged to deposit account 8. Deposit account number: (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Kris R. Keeney, Outside Counsel Name of Person Signing Signature Date 6/3/02

Total number of pages including cover sheet, attachments, and document: 21

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

06/14/2002 TDIAZ1 00000089 76300091

01 FC:481 40.00 OP 02 FC:482 75.00 OP

TRADEMARK REEL: 002525 FRAME: 0588

ASSIGNMENT
(INTENT-TO-USE MARKS)

WHEREAS, @Track Communications, Inc., a corporation organized and existing under the laws of Delaware, having a place of business at 1155 Kas Drive, Richardson, TX 75081 ("Assignor"), owns certain marks as follows:

| <u>MARK</u> | <u>APPLICATION NO.</u> | <u>DATE FILED</u> |
|--------------|------------------------|-------------------|
| 20V | 76/300,091 | 08/14/01 |
| 20V | 76/300,077 | 08/14/01 |
| 20V | 76/300,083 | 08/14/01 |
| DESIGN | | |
| 20V | 76/298,888 | 08/14/01 |
| DESIGN | | |
| ACKWARE (CA) | 1,072,913 | 08/29/00 |
| ACKWARE (EP) | 1,839,539 | 09/05/00 |

WHEREAS, Aether Systems, Inc., a corporation organized and existing under the laws of Delaware, and having a place of business at 11460 Cronridge Drive, Owings Mills, Maryland, ("Assignee"), is desirous of acquiring the entire right, title and interest in and to the marks, applications and registrations, and in and to any renewals and extensions that may be granted thereon, together with the goodwill of the business connected therewith;

WHEREAS, Assignee is the successor to the business of the Assignor, or that portion thereof, to which the mark pertains and that business is ongoing and existing;

THEREFORE, BE IT KNOWN that for good and valuable consideration, the receipt of which is hereby acknowledged, said Assignor has sold, assigned, transferred and by these presents does hereby sell, assign and transfer unto the Assignee, its successors or assigns, the entire right, title and interest in and to the mark, and registration, and in and to any renewals and extensions that may be granted thereon, together with the goodwill of the business connected therewith and any right to recover for past infringement thereof and other past injury thereto.

The Commissioner is requested to issue the certificate of registration to Assignee.

Signature Page Follows

@Track Communications, Inc.

Date: March 15th, 2002

By: [Signature]

Name: W. Michael Smith

Title: EXEC VP & CFO

STATE OF TEXAS

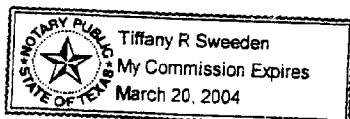
COUNTY OF Dallas

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BEFORE ME, the undersigned authority, on this day personally appeared Michael Smith, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me under oath that he executed the same as the act and deed of @Track Communications, Inc., as Exec. V.P. & CFO thereof, and for the purposes and consideration therein expressed.

2002.

GIVEN UNDER MY HAND and seal of office, this 15th day of March,



[Signature]
Notary Public in and for
the State of T E X A S

Signature page for Assignment of Intent-to-Use Marks

Asset Purchase Agreement

by and among

Aether Systems, Inc.

and

@Track Communications, Inc.

March 15, 2002

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT this ("Agreement") is made, entered into and effective this 15th day of March, 2002, by and between Aether Systems, Inc., a Delaware corporation (the "Buyer") with its principal place of business located at 11460 Cronridge Drive, Owings Mills, Maryland 21117, and @Track Communications, Inc., a Delaware corporation with its principal place of business located at 1155 Kas Drive, Suite 100, Richardson, Texas 75081 (the "Seller").

RECITALS

WHEREAS, Seller is in the business of providing wireless mobile communications, emergency dispatch, fleet management and mobile asset tracking services and Seller desires to sell certain of the assets used in certain of its business activities; and

WHEREAS, this Agreement contemplates a transaction in which: (i) the Buyer will purchase from Seller, and Seller will sell to the Buyer, certain assets of Seller and, (ii) the Buyer will assume certain liabilities of Seller, all on the terms as set forth herein.

NOW, THEREFORE, in consideration of the premises and of the representations, warranties, covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 ASSET PURCHASE AND CLOSING

1.1 Definitions. The capitalized terms used in this Agreement and not otherwise defined shall have the following meanings (unless the context otherwise requires, such capitalized terms shall include the singular and plural and the conjunctive and disjunctive forms of the terms defined):

"Acquired Assets" shall have the meaning set forth in Section 1.2.

"Adjustment Notice" shall have the meaning set forth in Section 1.6.

"Affiliate" means, with respect to any Person, (i) any Person that, directly or indirectly through one or more entities, Controls or is Controlled by, or is under common Control with, such Person, (ii) any director, officer, partner, member, manager or trustee of such Person or (iii) any Person who is an officer, director, partner, member, manager or trustee of any Person described in clauses (i) or (ii) of this sentence.

"Agreement" shall have the meaning set forth in the introductory paragraph.

"Assigned Marks" shall have the meaning set forth in Section 5.16.

"Assumed Liabilities" shall have the meaning set forth in Section 1.4.

"Books and Records" means all books, records, ledgers, files, documents, correspondence, lists, plats, drawings, creative materials, advertising and promotional materials, studies, reports, sales order files, engineering order files, purchase order files, warranty and repair files, supplier lists, customer lists, dealer, representative and distributor lists, books of account, invoices, surveys, analyses, strategies, plans, forms, designs, diagrams, specifications, technical data, production and quality control records, manufacturing records and formulations.

"Burlington Contract" means the Information Management Services Agreement, dated April 25, 1997, by and between Burlington Motor Carriers Incorporated and HighwayMaster Corporation (predecessor in interest to Seller) and any amendments and exhibits attached thereto.

"Business" means manufacturing, selling, marketing, distributing, servicing and developing the Product Lines and the HM5000 Acquired Business.

"Buyer" shall have the meaning set forth in the introductory paragraph.

"Buyer Common Stock" means the Buyer's common stock, par value \$0.01 per share.

"Buyer Indemnified Party" and "Buyer Indemnified Parties" shall have the meaning set forth in Section 7.1.

"Buyer Internet Site" shall have the meaning set forth in Section 5.6.

"Buyer Material Adverse Effect" shall have the meaning set forth in Section 4.1.

"Buyer Preferred Stock" means the Buyer's Series A Convertible Redeemable Preferred Stock, par value \$0.01 per share, with the rights, preferences and obligations set forth in the Certificate of Designation.

"Buyer Reports" shall have the meaning set forth in Section 4.5

"Buyer Shares" means the shares of the Buyer Preferred Stock issued upon conversion of the Note, and shares of the Buyer Common Stock issued upon conversion of the Buyer Preferred Stock.

"Cash Payment" shall have the meaning set forth in Section 2.1(a).

"Certificate of Designation" means the certificate regarding the rights and preferences of the Buyer Preferred Stock a copy of which is attached hereto as Exhibit G.

"Charter Documents" with respect to any Person, means the certificate of incorporation, bylaws, and all comparable organizational documents of such Person in each case as amended from time to time.

"Chosen Court" shall have the meaning set forth in Section 9.8.

"Claim" shall have the meaning set forth in Section 7.4.

"Claim Notice" shall mean any Claim for Indemnification hereunder, which notice shall include a good faith estimate of the dollar amount of the Claim and a description of the basis for that Claim that provides reasonable detail.

"Closing" shall have the meaning set forth in Section 2.4.

"Code" means the Internal Revenue Code of 1986, as amended.

"Competitive Product Lines" shall have the meaning set forth in Section 8.1(a).

"Confidential Information" means, without limitation, information that none of the Seller or the Buyer has disclosed to the public or to the trade with respect to present or future business, operations, services, products, research, inventions, discoveries, drawings, designs, plans, processes, models, technical information, facilities, methods, trade secrets, copyrights, software, source code, systems, patents, procedures, manuals, specifications, any other intellectual property, confidential reports, price lists, pricing formulas, customer lists, financial information (including the revenues, costs, or profits associated with any products or services of the Seller or the Buyer), business plans, lease structure, projections, prospects, opportunities or strategies, acquisitions or mergers, advertising or promotions, personnel matters, legal matters, any other confidential and proprietary information, and any other information not generally known outside the Seller or the Buyer that may be of value to the Seller or the Buyer, respectively, but excludes any information already properly in the public domain. "Confidential Information" also includes confidential and proprietary information and trade secrets that third parties entrust to the Seller or to the Buyer in confidence.

"Conforming Board" shall have the meaning set forth in Section 5.14.

"Contracts" means all contracts, contractual rights, understandings, commitments, notes, bonds, indentures, deeds of trust, mortgages, pledges, conditional sale or title retention agreements, equipment obligations, purchase agreements, loan or credit agreements, instruments of indebtedness, distributor agreements, representative or agent agreements, supply agreements, and all other documents, instruments, obligations and agreements, whether oral or written.

"Controls," "Control" and "Controlled" means the possession, direct or indirect, of the power to direct the management and policies of a Person, whether through the ownership of 50% or more of the voting interests of such Person or otherwise.

"Damages" means all liabilities, losses, claims, damages, punitive damages, causes of action, lawsuits, administrative proceedings (including informal proceedings), investigations, audits, demands, assessments, adjustments, judgments, settlement payments, deficiencies, penalties, fines, interest (including interest from the date of such

damages) and costs and expenses (including, reasonable attorneys' fees and expenses disbursements of every kind, nature and description).

"Environmental Permits" shall have the meaning set forth in Section 3.5(c).

"Escrow Agreement" shall have the meaning set forth in Section 2.1(a).

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.

"Governmental Authority" means a foreign, United States, state, local or other governmental entity or municipality or subdivision thereof or any authority, department, commission, board, bureau, agency, court or instrumentality.

"GAAP" means United States generally accepted accounting principles applied on a consistent basis throughout the periods indicated.

"Governmental Consents" shall have the meaning set forth in Section 3.14.

"Hazardous Material" shall have the meaning set forth in Section 3.5(a).

"HM5000 Acquired Business" means (i) all rights (but not the obligations) under the HM5000 Contracts, including the right to all revenue received thereunder, and (ii) the right to perform the HM5000 Non-Airtime Services.

"HM5000 Airtime Services" means Enhanced Services (as defined in the HM5000 Contracts) and Enhanced Cellular Roaming (as defined in the HM5000 Contracts) provided by Seller under the HM5000 Contracts.

"HM5000 Customers" means those parties with whom Seller has entered into an HM5000 Contract in their capacities as such.

"HM5000 Contract" means those contracts set forth on Schedule 1.2(e), which are the corporate customer contracts for the HM5000 products and services.

"HM5000 Non-Airtime Services" means the following services performed for the HM5000 Customers: (i) warranty services (including shipping and receiving of return material authorizations); (ii) non-warranty repair services; (iii) provisioning and activation of the HM5000 mobile units; and (iv) customer care and technical support.

"HM5000 Marks" shall have the meaning set forth in Section 5.15.

"HM5000 Retained Business" means (i) the obligation to perform all obligations under the HM5000 Contracts, including the obligation to provide the HM5000 Airtime Services and (ii) the right to provide the HM5000 Airtime Services.

"Indebtedness" shall mean, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind to such Person, (b) all obligations of such Person evidenced by bonds,

debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, inventory, services and supplies incurred in the ordinary course of such person's business), (f) all capitalized lease obligations of such Person, (g) all obligations of others secured by any Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (h) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof), (i) all letters of credit issued for the account of such Person, (j) all obligations of such Person to purchase securities (or other property) which arises out of or in connection with the sale of the same or substantially similar securities or property, and (k) all guarantees and arrangements having the economic effect of a guarantee by such Person of any indebtedness of any other person.

"Indemnified Party" or "Indemnified Parties" shall have the meaning set forth in Section 7.4

"Intellectual Property" shall mean any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States, international and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (ii) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary or confidential information, formulas, compositions, ideas, know-how, technology, products, processes, techniques, methods, research and development information, plans, proposals, technical data and financial, marketing, business, customer, prospect and supplier lists and date pricing and cost information, business and marketing plans, and all documentation relating to any of the foregoing; (iii) all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) all industrial designs and any registrations and applications therefor throughout the world; (v) all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world; (vi) all databases and data collections and all rights therein throughout the world; (vii) all moral and economic rights of authors and inventors, however denominated, throughout the world, (viii) domain names, web-sites and the content thereof, uniform resource locators and other names and locators associated with the Internet; (ix) all software, computer programs, computer systems, modules, and related data including workpapers, and user documentation, (x) all goodwill relating to any of the foregoing, and (xi) any similar or equivalent rights to any of the foregoing anywhere in the world and any other intellectual property (including all rights and remedies against any past, current or future infringement of any of the foregoing and rights of protection of interest therein under the laws of all jurisdictions).

"Inventory or Inventories" means all inventories, including inventories of products, work-in-process, finished goods, raw materials, supplies, equipment, parts, labels and packaging (including rights and interests in goods in transit, consigned inventory,

inventory sold on approval and rental inventory) and all returned products, samples and obsolete and nonsalable inventory.

"Knowledge" with respect to an individual, an individual will be deemed to have Knowledge of a particular fact or other matter if: (a) that individual is actually aware of the fact or matter; or (b) an individual exercising reasonable care could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement. A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is currently serving as a director, the President, Chief Executive Officer, Chief Financial Officer or Secretary or any other Person in any similar capacity has, or at any time had, Knowledge of that fact or other matter (as set forth in (a) and (b) above), and any such individual will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that Person.

"Laws" means all applicable laws, orders, judgments, rules, codes, regulations, requirements, variances, decrees or ordinances of any Governmental Authority.

"Leased Real Property" means all interests in real property not owned by the Seller, including leaseholds and sub-leaseholds, and all buildings and other improvements thereon, together with any additions thereto or replacements thereof that relate to or are affected by the Business, the Seller Services, HM5000 Retained Business, the Acquired Assets or the Assumed Liabilities.

"Liability" means any indirect or direct liability, indebtedness, guaranty, endorsement, claim, loss, Damage, deficiency, cost, expense, obligation or responsibility, either accrued, absolute, contingent, mature, unmature or otherwise and whether known or unknown, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured.

"License" means a license, franchise, concession, certificate, or registration that relates to or affects the Business, the Seller Services, HM5000 Retained Business, the Acquired Assets or the Assumed Liabilities.

"Lien" means any mortgage, security interest, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, preference, priority or other security agreement, option, warrant, attachment, right of first refusal, preemptive, right, conversion right, put, call or other similar claim or right, restriction on transfer, or preferential arrangement of any kind or nature whatsoever (including any restriction on the transfer of any assets, any conditional sale or other title retention agreement, any financing lease involving substantially the same economic effect as any of the foregoing and the filing of any financing statement under any applicable Law).

"Long Haul Trucking Business" shall mean the universe of Persons licensed by a Governmental Authority to operate Class VIII over the road tractor-trailers (gross vehicle weight in excess of 33,001 lbs) to commercially engage in the interstate transport of

freight and averaging more than 400 miles per delivery. The Long Haul Trucking Business also includes private fleets of vehicles engaged in the Long Haul Trucking Business, including by way of example, companies such as Wal-Mart.

"Material Adverse Effect" shall have the meaning set forth in Section 3.1.

"Material Contracts" shall have the meaning set forth in Section 3.12.

"Material Licenses" shall have the meaning set forth in Section 3.10.

"Material Permits" shall have the meaning set forth in Section 3.10.

"Neutral Accountant" means the Washington, D.C. office of Deloitte & Touche.

"New Buyer Employees" shall have the meaning set forth in Section 5.8.

"Note" shall have the meaning set forth in Section 2.1(b).

"Non-Conforming Inventory Notice" shall have the meaning set forth in Section 5.14.

"Notice Period" shall have the meaning set forth in Section 7.4.

"North American Market" shall have the meaning set forth in Section 5.13.

"Permit" means any permit, consent, authorization, approval or License, from or with a Governmental Authority (including the, permits, titles, Licenses, franchises or import permits) necessary for the present conduct of the Seller Services, HM5000 Retained Business or Business and for the conduct of the Seller Services, HM5000 Retained Business or Business during the preceding two year period.

"Permitted Liens" shall have the meaning set forth in Section 1.2.

"Person" means a corporation (either stock or non-stock, for or non-profit), limited liability company, association, partnership, organization, trust, joint venture or other legal entity, any individual natural person, group of individual natural persons or a Governmental Authority.

"Personal Property" means all of the equipment, office furniture, furnishings, office equipment, computer hardware and software, machinery, motorized and non-motorized equipment, tools, dies, spare parts, castings, forklifts, fixtures, promotional and advertising materials (including all catalogs, brochures, videos, plans, manuals, handbooks, and equipment), tangible forms of website content, leasehold and other improvements and all other tangible personal property.

"Platinum Service Product Line" means the Spirit software acquired from Burlington Motor Carriers, Inc. pursuant to that certain Software Transfer Agreement, dated April 25, 1997, between HighwayMaster Corporation (predecessor in interest to the Seller) and Burlington Motor Carriers, Inc. as modified, which consists of an IBM AS/400 based

outsourcing (ASP) solution utilizing databases to provide dispatching, driver recruiting, rating and billing, accounts receivable, customer service, driver settlement/payroll, DOT compliance/driver logs, electronic data interchange (EDI), fuel management, vehicle maintenance, driver personnel management, safety/claims, and sales and marketing modules.

"Preferred Stock Conversion Agreement" means an agreement between the parties setting forth the terms and conditions related to the mechanics of the conversion of the Buyer Preferred Stock into Buyer Common Stock and certain damages the Seller may be entitled to in connection therewith, substantially in the form attached hereto as Exhibit M.

"Product Lines" means collectively, the Platinum Service Product Line, the TrackWare Product Line and the 20/20V Product Line.

"Purchase Price" shall have the meaning set forth in Section 2.1.

"Registration Rights Agreement" shall have the meaning set forth in Section 6.1(c).

"Replacement Boards" shall have the meaning set forth in Section 5.14.

"Retained Assets" shall have the meaning set forth in Section 1.3.

"Retained Liabilities" shall have the meaning set forth in Section 1.5.

"Securities" shall mean, with respect to any non-individual Person, all membership interests, units, capital stock, equity interests or other evidence of ownership in or of such Person, and all rights and interests convertible into, or exercisable or exchangeable for, or evidencing the right to subscribe for any such membership interests, units, capital stock, equity interests or other evidence of ownership.

"Securities Act" shall mean the U.S. Securities Act of 1933, as amended.

"SEC" means the U.S. Securities Exchange Commission.

"Seller" shall have the meaning set forth in the introductory paragraph.

"Seller Hazardous Materials Activities" shall have the meaning set forth in Section 3.5(b).

"Seller Indemnified Party" and "Seller Indemnified Parties" shall have the meaning set forth in Section 7.2.

"Seller Internet Site" shall have the meaning set forth in Section 5.6.

"Seller Services" means those services (which service shall include providing access to and use of Seller's assets where applicable) provided by Seller to the Buyer pursuant to the Transition Services Agreement.

"Seller's Intellectual Property" shall have the meaning set forth in Section 3.8.

"Seller's Registered Intellectual Property" means, with respect to the Seller's Intellectual Property, all United States, international and foreign: (i) patents and patent applications (including provisional applications); (ii) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks; (iii) registered copyrights and applications for copyright registration; and (iv) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Authority.

"Service Boards" has the meaning set forth in Section 3.24.

"Seller Reports" has the meaning set forth in Section 3.29.

"Significant Customers" shall have the meaning set forth in Section 3.12(a)(iv).

"Significant Vendors" shall have the meaning set forth in Section 3.12(a)(v).

"Tax" means any tax or similar charge, impost, or levy imposed by a Governmental Authority (including, any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever) together with any interest, penalties, fines, or additions thereto, whether disputed or not.

"Tax Return" means any return (including information return), report, statement, schedule, notice, form, estimate or declaration of estimated tax relating to or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax.

"Third Party Consents" shall have the meaning set forth in Section 3.12(d).

"Threshold" shall have the meaning set forth in Section 7.7.

"TrackWare Product Line" means Seller's TrackWare Remote Unit which is comprised of a GPS satellite receiver, a Cellemetry®-enabled cellular transceiver, microprocessor, antenna, batter, cables, Webhost, host software and utilizes the Cellemetry Data Service Network to deliver and receive short data messages through use of the existing forward and reverse overhead control channels and the existing IS-41 capabilities of the AMPS cellular telephone network.

"Transition Services Agreement" shall have the meaning set forth in Section 5.7.

"VMI Product Line" shall have the meaning set forth in Section 5.13(a).

"20/20V Product Line" means Seller's 20/20V On-Board Tracking Unit product which is comprised of a GPS satellite receiver, a Cellemetry®-enabled cellular transceiver,

microprocessor, antenna, cables, and Webhost software and utilizes the Cellemetry Data Service Network to deliver and receive short data messages through use of the existing forward and reverse overhead control channels and the existing IS-41 capabilities of the AMPS cellular telephone network.

1.2 Acquired Assets. Upon and subject to the terms and conditions of this Agreement, at the Closing, Seller shall convey, sell, assign, transfer and deliver to the Buyer, and the Buyer shall purchase and acquire from Seller, all of the assets used in the Business, excluding the assets set forth on Schedule 1.3 (the "Acquired Assets") free and clear of all Liens, except as set forth on Schedule 1.4 (collectively, the "Permitted Liens"). Without limiting the generality of the foregoing, the Acquired Assets shall include all of the Seller's:

(a) accounts receivable, notes receivable and other receivables, related to the Business that accrue after Closing pursuant to Section 1.6;

(b) right, title and interest to the Inventory used in connection with the Business, including the items listed on Schedule 1.2(b);

(c) right, title, and interest to the Seller's Intellectual Property, used in connection with the Business, including the items listed on Schedule 1.2(c);

(d) rights and interests under all Contracts (including all Material Contracts), other than the HM5000 Contracts, including all outstanding offers or solicitations made by or to Seller to enter into any Contract, used in the Business, including those listed on Schedule 1.2(d); provided, however, if a Third Party Consent listed on Schedule 3.12(d)-2 is not obtained as required under Section 5.11, such Contract or Contracts shall not become an Acquired Asset and shall remain a Retained Asset;

(e) rights and interests (but not the obligations), other than the right to provide the HM5000 Airtime Services, under the HM5000 Contracts, including those listed on Schedule 1.2(e);

(f) right title and interest to equipment, supplies, furniture, fixtures, tools, materials, cellular telephones, computers, prototypes, vehicles, improvements and other tangible assets leased by the Seller used in the Business, including those listed on Schedule 1.2(f);

(g) right, title and interest to equipment, supplies, furniture, fixtures, tools, materials, cellular telephones, computers, prototypes, vehicles, improvements and other tangible assets owned by the Seller used in the Business, including those listed on Schedule 1.2(g);

(h) claims (including claims for past infringement of Intellectual Property to the extent that an ownership interest or exclusive license is transferred to Buyer hereunder and including all warranty claims) and causes of action related to any of the Acquired Assets or Business against other Persons (regardless of whether or not such claims and causes of action have been asserted by the Seller), and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Seller (regardless of whether such rights are currently exercisable) relating to any of the Acquired Assets or the Business;

(i) Governmental Consents, Licenses and Permits used in the Business including those listed on Schedule 1.2(i);

(j) rights relating to deposits and prepaid expenses and claims for refunds related to the Business;

(k) rights and interests to the Leased Real Property used in the Business including those listed on Schedule 1.2(k), subject to the Seller obtaining any required Third Party Consents;

(l) books, records, files and data, including service and warranty records, equipment logs, operating guides and manuals, creative materials and referral sources used in the Business; and

(m) goodwill associated with the Business.

1.3 Retained Assets. Notwithstanding any other provision of this Agreement, Seller shall retain all of its assets other than the Acquired Assets, and the Acquired Assets shall not include those assets specifically listed on Schedule 1.3 that relate to the Seller Services, HM5000 Retained Business or Business (such assets being collectively referred to hereinafter as the "Retained Assets").

1.4 Assumed Liabilities. At the Closing, the Buyer shall assume only those Liabilities of the Seller that are set forth on Schedule 1.4 where the event giving rise to such a Liability first occurs after the Closing (collectively, the "Assumed Liabilities") provided, however, if a Third Party Consent listed on Schedule 3.12(d)-2 is not obtained as provided in Section 5.11, then the Contract or Contracts related to such Third Party Consent(s) shall not become Acquired Assets and the Liabilities under such Contract or Contracts shall remain Retained Liabilities. Notwithstanding the foregoing the Buyer shall not assume or be responsible for any Tax Liabilities or for any other Liabilities where the event giving rise to such Tax Liability or other Liability first occurs on or prior to the Closing (whether known or unknown and whether a claim for any such default or breach is made before or after the Closing).

1.5 Retained Liabilities. Notwithstanding anything herein to the contrary, except for the Assumed Liabilities, Seller shall retain all, and the Buyer shall not have any responsibility for, any Liabilities of the Seller, whether or not relating to the Acquired Assets, Seller Services, HM5000 Retained Business or the Business and regardless of when such Liabilities arise (collectively referred to hereinafter as the "Retained Liabilities").

1.6 Proration and Post-Closing Payments. The parties acknowledge that following the Closing, there will be credits, adjustments and payments as set forth in Sections (a) and (b) below, pertaining to the Acquired Assets and Assumed Liabilities, and agree to work together to resolve such adjustments and make such payments equitably and promptly in accordance with this Section 1.6.

(a) Prorations. All general utility charges, all real property, personal property, and other similar Taxes, any rents, prepaid items, accounts payable and accounts receivable and similar prorable items levied with respect to the Assumed Liabilities or the Acquired Assets for

a period that includes but does not end on the date of the Closing shall be apportioned among the Buyer and Seller as follows: any item that relates to the portion of the period prior to or on the date of the Closing shall be apportioned to and paid by Seller, and any such item which relates to the portion of the period after the date of the Closing shall be apportioned to and paid by the Buyer; provided, however, that any special assessments or similar charges in effect or payable prior to the Closing shall be paid by the Seller prior to or at the Closing. The Seller shall assign to the Buyer all unused deposits with respect to the Acquired Assets and/or Assumed Liabilities and shall receive a credit in the amount thereof.

(b) Payables and Receivables. Except as set forth on Schedule 1.6(b), any payables pertaining to the Acquired Assets, Assumed Liabilities or Business, that exist or accrue on or before Closing, shall be Retained Liabilities of the Seller. Any receivables pertaining to the Acquired Assets, Acquired Liabilities and Business that exist or accrue on or before Closing, shall be Retained Assets of the Seller. Notwithstanding the foregoing, the Buyer shall have the right to pay any payables pertaining to the Acquired Assets, Assumed Liabilities or Business that exist or accrue on or before Closing and shall receive a credit in such amount from the Seller so long as such payment does not otherwise prejudice any rights of the Seller. All payables pertaining to the Acquired Assets, Assumed Liabilities or Business that arise or accrue after the date of the Closing shall be Assumed Liabilities of the Buyer. All receivables pertaining to the Acquired Assets, Assumed Liabilities or Business that arise after the date of the Closing shall be Acquired Assets of the Buyer. In the event the Seller incorrectly receives an invoice for any payable pertaining to the Acquired Assets, Assumed Liabilities or Business that arise or accrue after the date of the Closing, the Seller shall promptly provide such invoice to the Buyer for payment. In the event the Seller incorrectly receives a payment for a receivable pertaining to the Acquired Assets, Assumed Liabilities or Business that arise or accrue after the date of the Closing, the Seller shall credit the Buyer for such amount. In the event the Buyer incorrectly receives a payment for a receivable pertaining to the Acquired Assets, Assumed Liabilities or Business that arise or accrue prior to the date of the Closing, the Buyer shall credit the Seller for such amount.

(c) Procedure. After sixty (60) days but not more than ninety (90) days after Closing, and as necessary thereafter, the Buyer and the Seller shall each prepare in good faith and provide the other party with a written notice detailing the total amount of credits, debits and prorations it has accrued pursuant to this Section 1.6 (each an "Adjustment Notice"). The Buyer and Seller shall determine in good faith, based upon the two Adjustment Notices, the party entitled to payment, if any, and the amount of such payment. The party entitled to payment shall be paid the amount in cash within thirty (30) days of the parties agreeing to such determination (or the Neutral Accountant's determination in the case of a dispute). In the event of a dispute, the party claiming the dispute shall send a written notice to the other party stating in reasonable detail the item or items in dispute and shall state the amount, if any, of the adjustment requested. The parties will use their reasonable efforts to resolve any such objections and any resolution by them shall be final and binding on them. If the Buyer and Seller do not resolve any such dispute within thirty (30) days after receipt of the written notice of dispute, then the parties shall, within five (5) business days, submit any such unresolved dispute to the Neutral Accountant which firm shall, within thirty (30) days of such submission, resolve such remaining dispute and such resolution shall be binding and conclusive on the parties. The fees and expenses of the Neutral Accountant shall be shared equally by the parties. If issues in dispute are submitted to the

Neutral Accountant for resolution, each party will furnish to the Neutral Accountant such workpapers and other documents and information relating to the disputed issues as the Neutral Accountant may request and are reasonably available to that party, and each party will be afforded the opportunity to present to the Neutral Accountant (with a copy to the other party) any material relating to the determination and to discuss the determination with the Neutral Accountant (with the other party present). The determination by the Neutral Accountant as set forth in a written notice delivered by the Neutral Accountant to both parties will be final and binding on the parties hereto.

1.7 **Purchase Price Adjustment.** The Purchase Price shall be reduced by the amount, if any, determined under:

(a) Section 5.11, in the event that Seller fails to obtain a Third Party Consent as required thereunder; and/or

(b) Section 5.14, in the event that Seller fails to deliver the replacement Inventory as required under Section 5.14.

The remedy set forth in this Section 1.7, shall be in addition to all other remedies available to Buyer, including the remedy of setoff pursuant to Section 7.6.

ARTICLE 2 PURCHASE PRICE; CLOSING

2.1 **Purchase Price.** In reliance on the representations, warranties and covenants set forth herein and in full consideration of the sale, assignment, transfer and delivery of the Acquired Assets by the Seller to the Buyer, the Buyer shall pay to the Seller aggregate consideration of fifteen million United States dollars (\$15,000,000.00) payable as follows ("Purchase Price"):

(a) At Closing, the Buyer shall pay to the Seller two million United States dollars (\$2,000,000.00) by wire transfer of immediately available funds to an account designated in writing by the Seller (the "Cash Payment"), and in consideration of the Seller's indemnification obligations, the Buyer shall deliver to a mutually agreed upon escrow agent an escrow agreement in the form of Exhibit E (the "Escrow Agreement") executed by the Buyer, the Seller and the escrow agent, together with the delivery of one million United States dollars (\$1,000,000.00) of the total, aggregate Purchase Price by wire transfer of immediately available funds to an account specified by the escrow agent. The amounts in such account shall be released from Escrow and paid to the Seller pursuant to and in accordance with the terms of the Escrow Agreement.

(b) At Closing, the Buyer shall deliver to the Seller a convertible promissory note executed by the Buyer and payable to the Seller in the principal amount of twelve million United States dollars (\$12,000,000.00) in the form of Exhibit F attached hereto (the "Note").

2.2 **Allocation of Consideration.** Within sixty (60) days after Closing, the Buyer and the Seller shall mutually agree in writing to the manner in which the consideration referred to in Section 2.1 and the Assumed Liabilities are to be allocated among the Acquired

Assets. In the event that the Buyer and the Seller are unable to reach a mutual agreement as to the allocation of the consideration among the Acquired Assets by the end of the prescribed period, the parties shall adhere to the determinations of one of the following valuation firms to be selected by Buyer: (i) Houlihan Lokey Howard & Zukin, (ii) Standard & Poor's or (iii) Ernst & Young, unless otherwise required by GAAP. Such valuation firm shall be retained by the Buyer at Buyer's expense.

2.3 **Accounting Terms.** Except as otherwise expressly provided herein, all accounting terms used in this Agreement shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered hereunder shall be prepared, in accordance with GAAP consistently applied.

2.4 **Location and Date.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037, on March 15, 2002, or such other time and place mutually agreeable to the Buyer and the Seller, provided that all conditions to Closing shall have been satisfied or waived. The Closing shall take place by exchange of documents via facsimile and email. No person shall be required to attend in person.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

To induce the Buyer to enter into this Agreement and consummate the transactions contemplated hereby, the Seller represents and warrants to the Buyer as follows:

3.1 **Due Organization.** The Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware. The Seller is duly authorized and qualified to do business under all applicable Laws to own, lease and operate its properties and to carry on its business in the places and manner now conducted and presently planned to be conducted, except where the failure to be so authorized or qualified would have a material adverse effect (i) on any of the rights of the Buyer hereunder and all agreements and instruments delivered in connection herewith, on the Acquired Assets or Assumed Liabilities or on the operations, properties, assets, liabilities or condition (financial or otherwise) of the Seller Services, HM5000 Retained Business or Business taken as a whole or (ii) on the ability of the Seller to consummate the transactions contemplated hereby and all agreements and instruments delivered in connection herewith or to perform its obligations hereunder and all agreements and instruments delivered in connection herewith (a "Material Adverse Effect"). Schedule 3.1 hereto contains a list of all jurisdictions in which the Seller is authorized or qualified to do business. The Seller is in good standing as a foreign corporation in each jurisdiction in which it does business, except where the failure to be in good standing would not, individually or in the aggregate, have a Material Adverse Effect. The Seller has delivered to the Buyer true, complete and correct copies of its Charter Documents. The Seller is not in violation of, in conflict with or in default under any of its Charter Documents, and there exists no condition or event which, after notice or lapse of time or both, would result in any such violation, conflict or default.

3.2 **Authorization; Validity.** The Seller has full legal right and all requisite corporate power and authority to operate and carry on its business as presently conducted. The

draftsperson. Unless otherwise expressly provided, wherever the consent of any Person is required or permitted herein, such consent may be withheld in such person's sole, but reasonable discretion.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

AETHER SYSTEMS, INC.

By: *David S. Ors*
Name: David S. Ors
Title: CEO

@TRACK COMMUNICATIONS, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

AETHER SYSTEMS, INC.

By: _____
Name: _____
Title: _____

@TRACK COMMUNICATIONS, INC.

By: W. Michael Smetter
Name: W. MICHAEL Smetter
Title: EXEC V.P. & CFO