

Form PTO-1618A



06-19-2002
102127342

RECORDATION
TRADEMARKS ONLY

6-12-02

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

Merger Effective Date
Month Day Year

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

1739547

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

Corporation Association

Other

Citizenship/State of Incorporation/Organization

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

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TRADEMARK
REEL: 002528 FRAME: 0342

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

Name Area Code and Telephone Number

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the Recordation Cover Sheet, including any attachments. #

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

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

if additional numbers attached

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1739547"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

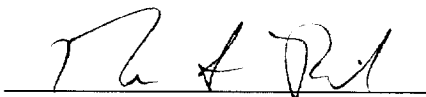
Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)
Deposit Account Number: 190741 #

Authorization to Charge additional fees: Yes No

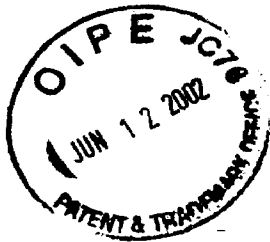
Statement and Signature

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.

Norman J. Rich, Esq.
Name of Person Signing


Signature

May 31, 2002
Date Signed



ASSET PURCHASE AGREEMENT

BY AND BETWEEN

LYTEC SYSTEMS, INC.

"SELLER"

AND

NATIONAL DATA CORPORATION

"BUYER"

DATED

JULY 14, 1994

ASSET PURCHASE AGREEMENT

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), made and entered into this day of July, 1994, by and among Lytec Systems, Inc., a Utah corporation ("Seller"), National Data Corporation, a Delaware corporation ("Buyer"), and Douglas E. Lyman and Teri L. Lyman ("Guarantors");

WITNESSETH:

WHEREAS, Seller is a corporation in the applications software and information services business;

WHEREAS, the lines of business conducted by Seller (the "Business") consist primarily of the acquisition, development, marketing, distribution, licensing, maintenance, and support of the systems and applications computer programs described in Schedule A attached hereto (the "Software Programs");

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to buy from Seller, all the assets of Seller relating to the Business, and Seller desires to transfer, and Buyer desires to assume, certain liabilities of Seller arising in connection with the Business, all upon the terms and conditions and subject to the limited exceptions set forth herein;

WHEREAS, Seller expects to terminate its employment or engagement of all of its employees and consultants involved with the Business, and Buyer desires to hire or retain such employees or consultants, all upon the terms and conditions set forth herein; and

WHEREAS, in furtherance of the parties' mutual desire for specificity with respect to the assets and liabilities to be transferred as part of the Business, the parties desire to provide for the scheduling and, where appropriate, segregation of such assets and liabilities on July 14, 1994 (the "Determination Date");

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements of the parties hereinafter set forth, the parties hereto, intending to be legally bound, do hereby agree as follows:

Article I

PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase, accept, and acquire from Seller, and Seller agrees to sell, transfer, assign, convey, and deliver to Buyer, at the Closing, all right, title, and interest of Seller in and to all of the rights and assets, real, personal, and mixed, tangible or intangible of the Business, as owned or held by Seller, but expressly excluding the rights and assets to be retained by Seller identified in Section 1.3. Subject to such express exclusion, the foregoing rights and assets shall hereinafter collectively be referred to as the "Assets." Without in any way limiting the generality of the foregoing, the Assets shall include all right and interest owned or held by Seller in the following:

a. Inventories. All inventories of (1) computer program code (in all media) and materials, including the Software Programs; (2) program documentation, including user materials; and (3) all other unused or reusable materials, stores, and supplies, in each case to the extent used in, relating

to, or arising out of the Business (the "Inventory"). As of the Determination Date, the Inventory consists of the Inventory listed by category and volume level in Schedule 1.1.a.

b. Technical Documentation All technical and descriptive materials (other than Inventory) relating to the acquisition, design, development, use, or maintenance of computer code and program documentation and materials in the Business (the "Technical Documentation"). As of the Determination Date, the Technical Documentation consists of the items listed in Schedule 1.1.b.

c. Software Contracts. All contracts, agreements, licenses, and other commitments and arrangements, oral or written, with any person or entity respecting the ownership, license, acquisition, design, development, distribution, marketing, use, or maintenance of computer program code, related technical or user documentation, and databases, in each case relating to or arising out of the Business (the "Software Contracts"). As of the Determination Date, the Software Contracts consist of the items listed and classified in Schedule 1.1.c as (1) licenses from third parties (development and/or marketing); (2) licenses from third parties (internal use only); (3) development contracts, work-for-hire agreements, and consulting and employment agreements; (4) distributorships, dealerships, franchises, and manufacturer's representative contracts; (5) licenses and sublicenses to others; and (6) maintenance, support, or enhancement agreements.

d. Computer Equipment. All equipment and devices (including data processing hardware and related telecommunications equipment, media, and tools) used in the Business (the "Computer Equipment"), including Seller's rights under all related warranties. As of the Determination Date, the Computer Equipment consists of all items listed in Schedule 1.1.d.

e. Office Furniture. All office furniture and fixtures used in the Business (the "Office Furniture"). As of the Determination Date, the Office Furniture consists of all items listed in Schedule 1.1.e.

f. Leases. The entire leasehold or rental interest arising under leases of

1. Real property, including buildings, structures, and other improvements located thereon, fixtures therein, and appurtenances thereto, and easements and other rights relative thereto;
2. Equipment, including data processing hardware and associated telecommunications equipment, media, and tools;
3. Office furnishings and fixtures; and
4. Other personalty, in each case as used in the Business (the "Leases").

As of the Determination Date, the Leases consist of all leases listed in Schedule 1.1.f.

g. Other Contracts. All contracts, agreements, licenses, commitments, arrangements, and permissions respecting the Business (the "General Contracts") to the extent not otherwise classified as Software Contracts in Schedule 1.1.a, Leases in Schedule 1.1.d, or Insurance Policies in Schedule 1.1.m. As of the Determination Date, the General Contracts consist of the items listed in Schedule 1.1.g.

h. Real Property. All real property used in the Business, including the buildings, structures, and other improvements located thereon, the fixtures contained therein, and the appurtenances thereto, and the easements and other rights relating thereto (the "Real Property"). As of the Determination Date, the Real Property consists of the property listed in Schedule 1.1.h.

i. Business Records. All presently existing business and marketing records, including accounting and operating records, asset ledgers, inventory records, budgets, personnel records, payroll records, customer lists, employment and consulting agreements, supplier lists, information and data respecting leased or owned equipment, files, correspondence and mailing lists, advertising materials and brochures, and other business records used in the Business (the "Business Records"), excepting therefrom Seller's minute book, stock book and stock ledger and other items listed in Schedule 1.1.i. Buyer shall retain all such business and marketing records in accordance with the provisions of Section 12.1.b., providing Seller with reasonable access to such records.

j. Authorizations. All governmental approvals, authorizations, certifications, consents, variances, permissions, licenses, and permits to or from, or filings, notices, or recordings to or with, federal, state, and local governmental authorities (the "Authorizations"), but subject, as to the assignability to Buyer, to the procurement of the Required Government Consents (listed in Schedule 4.4). As of the Determination Date, the Authorizations consist of the items listed in Schedule 1.1.j.

k. Accounts Receivable. All accounts receivable, including all license fees and maintenance fees and charges owing or to become owing to Seller under Software Contracts, in each case relating to or arising from the Business (the "Accounts Receivable"). As of the Determination Date, the Accounts Receivable consist of the items listed in Schedule 1.1.k.

l. Intellectual Property. All patents, trademarks, service marks, trade names, and copyrights (including registrations, licenses, and applications pertaining thereto), and all other intellectual property rights, trade secrets, and other proprietary information, processes, and formulae used in the Business or otherwise necessary for the ownership and use of the Assets and the conduct of the Business (the "Intellectual Property"). As of the Determination Date, the Intellectual Property includes the registered trademarks and service marks, the reserved trade names, the registered copyrights, and the filed patent applications and issued patents listed in Schedule 1.1.l.

m. Insurance Policies. All insurance and reinsurance, surety, bonding, or indemnity policies, binders, or contracts, and the benefits of any prior insurance coverage to the extent still available, as established or obtained with respect to the Business (the "Insurance Policies"). As of the Determination Date, the Insurance Policies consist of the items listed in Schedule 1.1.m.

n. Claims. All claims Seller may have against any person relating to or arising from the Assets or the Business, including rights to recoveries for damages or defective goods, to refunds, insurance claims, and choses in action ("Claims"). As of the Determination Date, such claims consist of the items contained in Schedule 1.1.n.

o. Liquid Assets. The deposits, other receivable items, prepaid expense items, and investments that are identified in Schedule 1.1.o plus all other cash, cash equivalents, deposits, notes receivable, other receivable items, and investments, and all other products and proceeds of any Assets, arising from the Business after the Determination Date.

p. Business Interests, Participations, and Ownership Positions. All interests, participations, and ownership positions held by Seller in any corporation, partnership, joint venture, co-marketing arrangement, or similar enterprise or undertaking relating to the Business. As of the Determination Date, such Assets consist of the items contained in Schedule 1.1.p.

1.2 Intent of the Parties. Although the Schedules to this Agreement are intended to be complete, to the extent any rights or assets of Seller primarily relate to the Business or are otherwise necessary for the ownership and use of the Assets and the conduct of the Business, but are not properly itemized or do not appear on the applicable Schedules where required, then, unless this Agreement otherwise provides directly for Buyer to provide for or obtain such rights or assets in a different way, the general language of Section 1.1 shall govern and such rights and assets shall nonetheless, at the sole and exclusive option of Buyer, be deemed transferred to Buyer at Closing. It is mutually acknowledged that the Schedules to Section 1.1 are to be prepared as of the Determination Date, and consequently the Assets so identified may vary on the Closing Date because of the effect of the ongoing operations of the Business. Further, because the Determination Date will occur following the execution of this Agreement, the omission of such Schedules until such time on or shortly after the Determination Date as they have been completed and the parties have agreed on their contents shall not impair the effectiveness of this Agreement.

1.3 Excluded Assets. Seller shall not sell or assign to Buyer, and Buyer shall not purchase or accept assignment from Seller of, the assets identified in Schedule 1.3 (the "Excluded Assets").

Article II

ASSUMPTION OF LIABILITIES

2.1 Enumeration of Assumed Liabilities. At and after the Closing, Buyer shall assume and agree to pay or perform only the liabilities and obligations of Seller that arise out of the Business or the Assets and are expressly identified in this Section 2.1 (the "Assumed Liabilities") or are represented by any other covenant, agreement, or indemnity of Buyer in this Agreement or the other agreements and instruments to be executed and delivered by Buyer in connection with this Agreement. Subject to the express exclusions set forth in Section 2.2, the Assumed Liabilities shall consist of the following:

a. Trade Payables. All accrued trade payables of Seller arising out of the Business, but only to the extent such items are credited in the Closing Date Balance Sheet.

b. Accrued Taxes. The accrued portion of Seller's liability for state and local tangible or intangible property taxes, but only to the extent such amount is credited in the Closing Date Balance Sheet.

c. Contracts. All payment and performance obligations arising out of or relating to (1) the Software Contracts; (2) the Leases; and (3) the General Contracts after the Closing Date, except to the extent attributable to

(a) any breach or default by Seller under any of the same on or before the Closing Date or (b) any material liability or obligation outside the ordinary course of business not disclosed by Seller pursuant to this Agreement, insofar as disclosure thereof is required hereunder and Buyer does not receive property or services of substantially equivalent value in respect of such liability or obligation.

d. Other Accrued Liabilities. Any other liabilities recorded in the Closing Date Balance Sheet.

e. Liabilities Relating to Intellectual Properties. Any copyright or trademark infringement or other liabilities, claims or damages relating to or arising from the screen design, keystroke selection, or general "look and feel" of the Intellectual Property described in Section 1.1.1 in claims raised and formally communicated after the Closing Date, whether or not the claims relate to any product, program or material of Seller or the Business distributed, licensed or delivered prior to the Closing Date.

2.2 Liabilities Not Assumed. Without in any way expanding the specificity and limitation of Section 2.1, except to the extent otherwise provided for herein, Buyer shall not assume or be responsible for any of the following liabilities or obligations expressly identified in this Section 2.2 (the "Excluded Liabilities"):

a. Nonenumerated Liabilities. Any liability or obligation of Seller of any kind, known or unknown, contingent or otherwise, not either enumerated as an Assumed Liability in Section 2.1, this Section 2.2, or resulting from any other covenant, agreement, or indemnity of Buyer in this Agreement or the other agreements and instruments to be executed and delivered by Buyer in connection with this Agreement.

b. Taxes. Any liability or obligation of Seller for federal, state, or local income, franchise, property (except as provided in Section 2.1.b with respect to the current portion of property taxes), sales or use (to the extent arising from pre-Closing transactions), or recapture taxes, assessments, and penalties, whether arising out of the transactions contemplated by this Agreement or otherwise.

c. Violations of Law. Except as otherwise provided in Sections 2.1.e., 2.2.e. and 4.9.d., any liability or obligation resulting from violations of any applicable laws or regulations by Seller prior to the Closing Date or infringement of third-party rights or interests.

d. Employee Liabilities. Any employee liabilities relating to present and past employees of the Business with respect to plans, programs, policies, commitments, and other benefit entitlement established or existing on or prior to Closing (whether or not such liabilities are accrued or payable at Closing, and whether or not such liabilities are contingent in nature), including:

1. Any liability or obligation for workers' compensation.
2. Any current or future liabilities of Seller to employees retiring on, before, or after Closing, and their dependents.
3. Any current or future liabilities for benefits that may have been accrued or earned by any employees associated with the Business on

or before Closing under any pension plans relating to service prior to the Closing Date.

4. Any current or future liabilities for claims incurred prior to Closing and related expenses with respect to any employees associated with the Business under any health, pension, welfare or disability plans established or existing at or prior to Closing, regardless of when filed with Buyer, Seller, or the claims administrator for any such plan.

e. Product Liability. Any liability or obligation for product liability or warranty claims or damage claims arising out of defects in or failures of any product, program, or material of Seller or the Business provided (1) the product, program, or material of Seller or the Business was distributed, licensed, or delivered prior to the Closing Date, and (2) the claim was raised and formally communicated prior to the Closing Date. All other product liability or warranty claims or damage claims hereunder, including all claims raised and formally communicated after the Closing Date, shall be the responsibility of and are hereby assumed by the Buyer.

f. Incidents to Excluded Assets. Any liability or obligation associated with any of the Excluded Assets, except to the extent of the amount of any such liability credited in the Closing Date Balance Sheet.

g. Litigation. Any Litigation (as defined in Section 4.20) pending or threatened against Seller or the Assets.

Article III

PRICE AND PAYMENT

3.1 Purchase Price. Subject to adjustment for any "Loss" (as defined in Section 14.1), the aggregate purchase price for the Assets (the "Purchase Price") shall be (1) \$2.25 million at closing, plus (2) an opportunity to earn up to an additional \$750,000 over two years after Closing, based upon the performance of the Business against the revenue and productivity goals set forth in Schedule 3.1(2). If Buyer, without the consent of Seller or Guarantor Douglas E. Lyman, changes the pricing or positioning of any current Seller product and such change materially and adversely impacts the amount of the Second Installment or Final Payment, then Seller and Buyer will modify Schedule 3.1(2) accordingly.

3.2 Payment.

a. On the Closing Date, Buyer shall pay to Seller, in cash, an amount (the "Initial Payment") equal to \$2.25 million.

b. On the first business day falling one year after the Closing Date, Buyer shall pay to Seller, in cash, an amount equal to the sum calculated pursuant to Schedule 3.1(2), but not more than \$375,000 (the "Second Installment").

c. On the first business day falling two years after the Closing Date, Buyer shall pay to Seller, in cash, an amount equal to the sum calculated pursuant to Schedule 3.1(2), but not more than \$375,000 (the "Final Payment").

3.3 Offset for Losses. The Final Payment shall be subject to offset at any time on or prior to the date on which such Final Payment is due for any "Loss" incurred by Buyer, as defined and provided for in Article XIV, but only if Buyer has delivered or simultaneously delivers to Seller "Required Notice" of such Loss, as defined in Section 14.3. In the event Buyer claims the benefit of such an offset following the delivery of the "Required Notice" of the pertinent Loss, but such Loss is subsequently found not to be substantiated under Article XIV in whole or in part, the amount to which Buyer is not entitled shall be paid to Seller promptly upon such determination.

3.4 Method of Payment. All payments from one party to another under this Agreement shall be made by wire transfer of immediately available federal funds in United States dollars to an account designated in writing by the party to receive such payment.

Article IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

4.1 Organization. Seller is a corporation validly existing and in good standing under the laws of the State of Utah with the corporate power and authority to conduct its business (including the Business) and to own and lease its properties and assets (including the Assets) and, as to the conduct of the Business and the use and ownership of the Assets specifically, to the best of Seller's knowledge is duly qualified or licensed to do business and is in good standing as a foreign corporation in all states where required under applicable laws.

4.2 Power and Authority. Seller has the power and authority to execute, deliver, and perform this Agreement and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby, has taken all necessary corporate action to authorize the execution and delivery of this Agreement and such other agreements and instruments and the consummation of the transactions contemplated hereby and thereby. This Agreement is, and the other agreements and instruments to be executed and delivered by Seller in connection with the transactions contemplated hereby shall be, the legal, valid, and binding obligations of Seller, enforceable in accordance with their terms.

4.3 No Conflict. Neither the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby, nor the consummation of the transactions contemplated hereby or thereby, will violate or conflict with (1) except insofar as Required Government Consents are to be procured prior to Closing, any federal, state, or local law, regulation, ordinance, zoning requirement, governmental restriction, order, judgment, or decree applicable to Seller, the Business, or the Assets, to the best of Seller's knowledge, (2) any provision of any charter, bylaw or other governing or organizational instrument of Seller, or (3) except insofar as Required Contract Consents are to be procured prior to Closing, any mortgage, indenture, license, instrument, trust, contract, agreement, or other commitment or arrangement to which Seller is a party or by which Seller or any of the Assets is bound.

4.4 Required Government Consents. Except for (1) the filing and/or recording of deeds and other instruments of conveyance, transfer, or

assignment required by federal copyright, patent, or trademark laws or the laws of the states in which the Assets are located, to occur upon Closing; and (2) the further exceptions set forth in Schedule 4.4 (the foregoing items (1) through (2) being referred to herein as the "Required Government Consents"), to the best of Seller's knowledge, no approval, authorization, certification, consent, variance, permission, license, or permit to or from, or notice, filing, or recording to or with, federal, state, or local governmental authorities is necessary for the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby by Seller or the consummation by Seller of the transactions contemplated hereby or thereby.

4.5 Required Contract Consents. Except as set forth in Schedule 4.5 (such scheduled items being referred to herein as the "Required Contract Consents"), to the best of Seller's knowledge, no approval, authorization, consent, permission, or waiver to or from, or notice, filing, or recording to or with, any person (other than the governmental authorities addressed in Section 4.4) is necessary for (1) the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby by Seller or the consummation by Seller of the transactions contemplated hereby; (2) the transfer and assignment to Buyer at Closing of the Software Contracts, the Leases, the General Contracts, or the Insurance Policies, or (3) the ownership and use of the Assets and the conduct of the Business (including by Buyer).

4.6 Title to Tangible Property. Buyer at Closing shall obtain good and marketable title to all of the tangible Assets (i.e., the Inventories, Technical Documentation, Office Furniture, Real Property, and Business Records), free and clear of all title defects, liens, restrictions, claims, charges, security interests, or other encumbrances of any nature whatsoever, including any mortgages, leases (except for the Leases listed in Schedule 1.1.f.), chattel mortgages, conditional sales contracts, collateral security arrangements, or other title or interest retention arrangements.

4.7 Condition of Property. All of the tangible Assets are in good operating order, condition, and repair, ordinary wear and tear excepted, and are suitable for use in the Business in the ordinary course.

4.8 Inventory. All Inventory is of usable quality and includes no material amount of obsolete or discontinued items or items that cannot be used by Buyer in the Business in the ordinary course.

4.9 Title to Intellectual Property.

a. Ownership. Except for the rights and licenses validly and effectively established by the Software Contracts as listed in Schedule 1.1.c., Seller owns, Buyer shall receive at Closing, and the Intellectual Property includes, all patents, trademarks, service marks, trade names, and copyrights (including registrations, licenses, and applications pertaining thereto) and all other intellectual property rights, trade secrets, and other proprietary information, processes, and formulae used in the Business or otherwise necessary for the ownership and use of the Assets and the conduct of the Business. Schedule 1.1.1 sets forth all registered trademarks and service marks, all reserved trade names, all registered copyrights, and all filed patent applications and issued patents listed in Schedule 1.1.1 used in the Business or otherwise necessary for the conduct of the Business as heretofore conducted.

b. Copyright Protection. Schedule 4.9.b sets forth the form and placement of the proprietary legends and copyright notices displayed in or on the Software Programs or related materials. To the best of Seller's Knowledge, in no instance has the eligibility of the Software Programs for protection under applicable copyright law been forfeited to the public domain by omission of any required notice or any other action.

c. Personnel Agreements. All personnel, including employees, agents, consultants, and contractors, who have contributed to or participated in the conception and development of the Software Programs, Technical Documentation, or Intellectual Property on behalf of Seller either (1) have been party to a "work-for-hire" arrangement or agreement with Seller, in accordance with applicable federal and state law, that has accorded Seller full, effective, exclusive, and original ownership of all tangible and intangible property thereby arising, or (2) have executed appropriate instruments of assignment in favor of Seller as assignee that have conveyed to Seller full, effective, and exclusive ownership of all tangible and intangible property thereby arising.

d. Absence of Claims. No claims have been asserted and communicated to Seller by any person or entity to the use of the Intellectual Property, and Seller does not know of any valid basis for any such claim. To the best of Seller's knowledge, the use of the Intellectual Property, such as patents and trademarks, by the Seller does not infringe on the rights of any person.

4.10 Adequacy of Technical Documentation. The Technical Documentation includes the source code and system documentation that may be necessary to render such materials understandable and usable by an experienced computer programmer trained in the C++ language and the Windows programming environment. The Technical Documentation also includes any program (including compilers), "workbenches", tools, and higher level (or "proprietary") language used by Seller for the development, maintenance, and implementation of the Software Programs.

4.11 Contracts--General. The Software Contracts listed in Schedule 1.1.c, the General Contracts listed in Schedule 1.1.g, and the Insurance Policies listed in Schedule 1.1.m. constitute all contracts, agreements, licenses, and other commitments and arrangements in effect as of the Determination Date, other than the Leases addressed by Section 4.14, that either (1) involve expenditure of more than \$1,000 or (2) require performance by any party thereto more than six (6) months after the Closing Date. Seller has disclosed and provided copies of such contracts to Buyer, and to the best of Seller's knowledge, all such contracts are valid, binding, and enforceable in accordance with their terms and are in full force and effect. To the best of Seller's knowledge, there are no existing defaults or notices of default under any such contracts and no act, event, or omission has occurred that, whether with or without notice, lapse of time, or both, would constitute a default thereunder.

4.12 Third-Party Components in Software Programs. Seller has validly and effectively obtained the right and license to use, copy, modify, and distribute the third-party programming and materials contained in the Software Programs and Technical Documentation pursuant to the Software Contracts identified as "licenses from third parties (development and/or marketing)" or "Licenses from third parties (internal use only)" in Schedule 1.1.c. To the best of Seller's knowledge, the Software Programs and Technical Documentation contain no other programming or materials in which any third party may claim

superior, joint, or common ownership, including any right or license. Except for publicly available materials, to the best of Seller's knowledge, the Software Programs and Technical Documentation do not contain derivative works of any programming or materials not owned in their entirety by Seller and included in the Assets.

4.13 Third-Party Interests or Marketing Rights in Software Programs.

Seller has not granted, transferred, or assigned any right or interest in the Software Programs, the Technical Documentation, or the Intellectual Property to any person or entity, except pursuant to the Software Contracts identified as "distributorships, dealerships, franchises, and manufacturer's representative contracts" or "licenses and sublicenses to others" in Schedule 1.1.c. Except as set forth in Schedule 4.13, all Software Contracts identified as "licenses and sublicenses to others" in Schedule 1.1.c constitute only end-user agreements, each of which grants the end-user thereunder solely the nonexclusive right and license to use identified Software Programs and related user documentation, for internal purposes only, on a single central processing unit (CPU). Except as listed in Schedule 4.13, there are no contracts, agreements, licenses, and other commitments and arrangements in effect with respect to the marketing, distribution, licensing, or promotion of the Software Programs or any other Inventory, the Technical Documentation, or the Intellectual Property by any independent salesperson, distributor, sublicensor, or other remarketer or sales organization, except for the Software Contracts identified as "distributorships, dealerships, franchises, and manufacturer's representative contracts" in Schedule 1.1.c.

4.14 Leases. The Leases listed in Schedule 1.1.f. constitute all leasing or rental contracts, agreements, and other commitments and arrangements in effect as of the Determination Date that either (1) have an annual rental, in any individual instance, in excess of \$1,000, or (2) continues in effect for a period of twelve (12) months or longer without allowing Seller (and, following the Closing, Buyer) to terminate without penalty for any reason upon the delivery of any required notice. To the best of Seller's knowledge, all Leases are valid, binding, and enforceable in accordance with their terms and are in full force and effect. There are no existing defaults or notices of default thereunder, and, to the best of Seller's knowledge, no act, event, or omission has occurred that, whether with or without notice, lapse of time, or both, would constitute a default thereunder.

4.15 Accounts Receivable. All Accounts Receivable are fully collectible within the customary collection cycle, subject only to bad debts that will not exceed \$1,200. All Accounts Receivable call for payment to be made within at least ninety (90) days to the principal office of the Seller.

4.16 Financial Statements. To the best of Seller's knowledge, Schedule 4.16 sets forth combined income statements, balance sheets, and statements of changes in financial position for the Business as of July 14, 1994 (the "Financial Statements"), prepared in accordance with GAAP, consistently applied with the principles and procedures employed in prior periods by the Business. To the best of Seller's knowledge, the Financial Statements properly reflect all Assets and Assumed Liabilities as then in existence. To the best of Seller's knowledge, the Financial Statements fairly present the results of operation and the financial position of the Business as of the dates thereof and the periods then ended in conformity with GAAP consistently applied with the principles and procedures employed in prior periods by the Business.

4.17 Undisclosed Liabilities. To the best of Seller's knowledge, except as set forth in Schedule 4.17, there are no liabilities or obligations, secured or unsecured (whether absolute, accrued, contingent, or otherwise, and whether due or to become due), of a nature required by GAAP to be reflected in a balance sheet of the Business evidencing the Assets and the Assumed Liabilities in their entirety, except such liabilities and obligations that either (1) are accrued and reserved against in the Financial Statements or (2) have arisen or been incurred in the ordinary course of business since the dates of the Financial Statements and are accrued and reserved against in Closing Date Balance Sheet.

4.18 Conduct of Business.

a. Ordinary Course of Business: No Removal or Disposal of Assets.

Except as set forth in Schedule 4.18.a, since May 19, 1994, Seller has operated the Business in the ordinary course consistent with past practices, and has not removed or disposed of any assets that were assets of the Business as of May 19, 1994 except in the ordinary course.

b. No Material Adverse Change. Except as set forth in Schedule 4.18.b, since May 19, 1994, there has been no material adverse change in the Business or the Assets or in the financial condition, operations, or prospects of the Business.

c. Absence of Particular Events. Except as set forth in Schedule 4.18.c, since May 19, 1994, Seller has not (1) suffered any damage or destruction adversely affecting the Business or involving the Assets in the amount of \$1,000 in any one instance; (2) increased the compensation payable or to become payable to employees of Seller involved in the Business having annual earnings in excess of \$20,000 per year or declared any bonus; (3) incurred any liability or obligation relating to the Business other than in the ordinary course consistent with past practice; (4) made any change in any method, practice, or principle of accounting involving the Business or the Assets; (5) paid, loaned, or advanced any material monetary amount or other asset to, or sold, transferred, or leased any asset to, any employee involved in the Business except for normal compensation involving salary and benefits; or (6) agreed to take any action described in this Section 4.18.c.

d. Absence of Joint Ventures, etc. Except as set forth in Schedule 4.18.d, Seller is not a party to any joint venture or other similar agreement or arrangement that involves any sharing of profits of the Business or the Assets or is similar to or competitive with the Business, other than the Software Contracts identified as "licenses from third parties (development and/or marketing)" or "distributorships, dealerships, franchises, and manufacturer's representative contracts" in Schedule 1.1.c.

4.19 Major Vendors and Customers. Schedule 4.19 lists each licensor, developer, remarketer, distributor, and supplier of property or services to, and each licensee, end-user, or customer of, the Business, to whom Seller paid or billed in the aggregate \$1,000 or more during the most recent fiscal year. To the best knowledge of Seller, there is no reason why the relationship with any such person or entity might not be continued by Buyer, after its acquisition of the Business, at least at substantially the same level of business and on substantially the same terms as Seller experienced during the twelve (12) -month period preceding the Closing.

4.20 Litigation. Except as set forth in Schedule 4.20, (1) no claim, action, suit, proceeding, inquiry, hearing, arbitration, administrative proceeding, or investigation (collectively, "Litigation") is pending, or, to Seller's best knowledge, threatened against Seller, its present or former directors, officers, or employees, or any party to any Software Contract, affecting, involving, or relating to the Business or any of the Assets; and (2) no Litigation has been brought within the last three years against Seller affecting, involving, or relating to the Business or any of the Assets. Seller knows of no facts that could reasonably be expected to serve as the basis for Litigation against itself (or the Buyer upon acquisition of the Business), its present or former directors, officers, or employees, or any party to the Software Contracts or Other Contracts, affecting, involving, or relating to the Business or the Assets.

4.21 Court Orders, Decrees, and Laws

a. Compliance With Laws. There is no outstanding or, to Seller's best knowledge, threatened order, writ, injunction, or decree of any court, governmental agency, or arbitration tribunal against Seller affecting, involving, or relating to the Business or the Assets. To the best of Seller's knowledge, Seller is not in violation of any applicable federal, state, or local law, regulation, ordinance, zoning requirement, governmental restriction, order, judgment, or decree affecting, involving, or relating to the Business or the Assets except where noncompliance has no material adverse effect upon the financial condition, operation, or prospects of the Business (including under ownership by Buyer) or the Assets, and Seller has received no notices of any allegation of any such violation. The foregoing shall be deemed to include laws and regulations relating to the federal patent, copyright, and trademark laws, state trade secret and unfair competition laws, and to all other applicable laws, including equal opportunity, wage and hour, and other employment matters, and antitrust and trade regulation laws.

b. Adequacy of Authorizations. The Authorizations constitute all approvals, authorizations, certifications, consents, variances, permissions, licenses, or permits to or from, or filings, notices, or recordings to or with, federal, state, or local governmental authorities that are required for the ownership and use of the Assets and the conduct of the Business under federal, state, and local law, regulation, ordinance, zoning requirement, governmental restriction, order, judgment, or decree. To the best of Seller's knowledge, Seller is in compliance with all terms and conditions of such required Authorizations. To the best of Seller's knowledge, all of the Authorizations are in full force and effect, and, to the best of Seller's knowledge, no suspension or cancellation of any of them is being threatened, nor will any of the Authorizations be affected by the consummation of the transactions described in this Agreement, except to the extent any such Authorizations are transferable only upon receipt of the Required Government Consents. To the best of Seller's knowledge, Seller is in compliance with all other applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in those laws or contained in any law, regulation, code, plan, order, decree, judgment, notice, or demand letter issued, entered, promulgated, or approved thereunder relating to or affecting the Business.

c. Environmental Compliance. To the best of Seller's knowledge, except as set forth in Schedule 4.21.c, neither Seller, nor, to the best of Seller's knowledge, any prior owner, user, controller, or occupant, nor any tenant, subtenant, prior tenant, or prior subtenant has ever used Hazardous Materials (as hereinafter defined) on, from, or affecting the Assets or any

facility, site, area, or property owned, used, controlled, or occupied by the Business, in any manner that violates any federal, state, or local law, regulation, governmental restriction, order, judgment, or decree governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials. For purposes hereof, "Hazardous Materials" include any flammable materials, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 USC §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §§ 6901 et seq.), and applicable laws of the state of Utah, and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state, or local environmental law, ordinance, rule, or regulation. The term "material" includes asbestos, polychlorinated biphenyls, kerosene, and fuel oil. The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term "environment" means any surface or groundwater water supply, land, surface, or subsurface strata or the ambient air.

4.22 Taxes

a. Tax Returns and Payment of Taxes. All tax returns of every kind (including returns of real and personal property taxes, intangible taxes, withholding taxes, and FICA and unemployment compensation taxes) relating to the Business that are due to have been filed in accordance with any applicable law have been duly filed; and all taxes shown to be due on such returns have been paid in full.

b. State Sales Taxes, etc. To the best of Seller's knowledge, Schedule 4.22.b identifies (1) each jurisdiction in which the Business is conducted in which sales, use, excise, or intangible taxes are due or paid on Software Programs or other Inventory sold or licensed by Seller in conjunction with the Business and (2) the Software Programs or other Inventory subject to taxation in such jurisdiction.

4.23 Personnel and Compensation

a. List of Personnel. Seller shall have delivered to Buyer prior to Closing a true and complete list of the names and current compensation levels of (1) all salaried or annual employees and (2) all consultants involved in the Business. Such list shall be attached hereto and incorporated herein as Schedule 4.23.a.

b. Compensation, etc. Except as set forth in Schedule 4.23.b, Seller is not subject to, and has no obligation under, any employment, consulting, or collective bargaining contracts, deferred compensation, pension (as defined in Section 3(2) of the Employee Retirement Income Security Act (ERISA)), profit-sharing, bonus, stock option, stock appreciation, stock purchase, or other nonqualified benefit or compensation commitments, benefit plans, arrangements, or plans, including any welfare plans (as defined in Section 3(1) of ERISA), fringe benefit arrangements, or multi-employer plans (as defined in Section 3(37)(A) of ERISA) of or pertaining to the present or former employees involved in the Business. To the best of Seller's knowledge, Seller has complied with all of its obligations under the foregoing in all material respects.

c. **Retirement Plans.** Schedule 4.23.c identifies all of the retirement plans, by plan name and plan year, that Seller has established for the benefit of persons who are or were involved in the Business (the "Plans"). The Plans and their administration are the sole responsibility of Seller.

d. **Pension Benefit Guaranty Corporation.** No liability to the Pension Benefit Guaranty Corporation has been incurred with respect to the Plans. All premiums due and payable to the Pension Benefit Guaranty Corporation with respect to the Plans have been paid. The Pension Benefit Guaranty Corporation has not instituted proceedings to terminate any of the Plans. No event has occurred, and there exists no condition or set of circumstances, that presents a risk that any part or future termination of any of the Plans could result in liability on the part of the Company to the Pension Benefit Guaranty Corporation. No notice of a reportable event (within the meaning of Section 4043(b) of ERISA) has been filed by the plan administrator of any of the Plans with the Pension Benefit Guaranty Corporation, nor has any such reportable event occurred.

e. **No Accumulated Deficiency.** None of the Plans has an accumulated funding deficiency, as defined in Section 302(a)(2) of ERISA. In addition, each of the Plans is fully funded such that assets for each Plan equal or exceed the present value of accrued benefits based on the actuarial assumptions included in Schedule 21(c), which assumptions include interest rates, incidence of turnover, and mortality and disability.

f. **Submission to Buyer for Review.** All documents, including plan and trust instruments, annual reports, and actuarial reports, relating to the Plans for the Plans' most recently ended Plan years, have been furnished to Buyer for its review.

g. **Multi-employer Plan.** Neither Seller or any predecessor in interest thereto, nor thereto, nor any trade or business under common control with Seller or any predecessor in interest thereto (within the meaning of Section 414(i) of the Internal Revenue Code) has ever contributed to any pension plan that is a Multi-employer Plan for the benefit of employees involved in the Business.

h. **Adequate Reserves for Welfare Plans.** For welfare Plans (as defined in Section 3(2) of ERISA) listed (or required to be listed) in Schedule 4.23.b, reserves have been established by Seller or its insurance companies at least sufficient to pay all claims incurred under the provisions of such Plans on or prior to the Closing Date. Seller has not received notice of, nor does it know any basis for, any retrospective premium charge for claims relating to any period prior to the Closing Date under such contracts.

i. **Compliance with Laws.** To the best of Seller's knowledge, Seller is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and occupational safety and health pertaining to the Business and the employees involved in the Business, and is not engaged in any unfair labor practice within the meaning of Section 8 of the National Labor Relations Act. To the best of Seller's knowledge, there is no unfair labor practice, charge, or complaint or any other matter against or involving Seller pending or, to the knowledge of Seller, threatened before the National Labor Relations Board or any court of law pertaining to the Business or the employees involved in the Business. To the best of Seller's knowledge, there is no labor strike, dispute, slowdown, or stoppage pending or threatened against Seller pertaining to the Business or the employees involved in the Business. To the best of

Seller's knowledge, no certification or decertification question or organizational drive exists or has existed within the past twelve (12) months respecting the Business or the employees involved in the Business. To the best of Seller's knowledge, Seller has not experienced any organized work stoppage or other labor difficulty involving the employees of the Business since at least June 26, 1990. To the best of Seller's knowledge, there are no charges, investigations, administrative proceedings, or formal complaints of discrimination (including discrimination based upon sex, age, marital status, race, national origin, sexual preference, handicap, or veteran status) pending or, to the knowledge of Seller, threatened before the Equal Employment Opportunity Commission or any federal, state, or local agency or court against Seller pertaining to the Business or the employees of the Business, and, to the knowledge of the Seller, no basis for any such charge, investigation, administrative proceeding, or complaint exists. To the best of Seller's knowledge, there have been no audits of the equal employment opportunity practices of Seller pertaining to the Business or the employees involved in the Business.

4.24 Insurance Policies. Schedule 1.1.m lists all Insurance Policies relating to the Business or the Assets in force as of the Determination Date, naming Seller as an insured or beneficiary or as a loss-payable payee or for which Seller has paid or is obligated to pay all or part of the premiums. Other than as set forth in Schedule 4.24, Seller has not received notice of any pending or threatened termination or retroactive premium increase with respect thereto; and, to the best of Seller's knowledge, Seller is in compliance with all conditions contained therein, the noncompliance with which could result in termination of insurance coverage or increased premiums for prior or future periods. There are no pending material claims against such insurance by Seller as to which insurers have denied liability or are defending under any reservation of rights, and, to the knowledge of Seller, there exists no material claim under such insurance that has not been properly filed by Seller.

4.25 Sufficiency of Rights. Except as set forth in Schedule 4.25, and assuming the renewal or continuation of all business arrangements currently in place (and, to the best of Seller's knowledge, no reason exists why such renewal or continuation in favor of Buyer could be obstructed), to the best of Seller's knowledge, the Assets constitute all of the properties, rights, and privileges necessary for the continuation of the conduct of the Business by Buyer in substantially the same manner as it has been operated by Seller during the twelve (12)-month period preceding the Closing, although Seller makes no representations or warranties regarding the future performance of the Business (including levels of sales or revenues).

4.26 Broker's or Finder's Fees. Seller has not authorized any person to act as broker or finder or in any other similar capacity in connection with the transactions contemplated by this Agreement in any manner that may or will impose liability on Buyer.

4.27 Related-Party Transactions. Except as disclosed in Schedule 4.27, Seller is not a party to any contract, agreement, license, lease, or arrangement with, or any other commitment to, directly or indirectly, (1) any officer or salaried employee of the Business in office within two (2) years of the date of execution hereof; (2) any corporation, trust, or other entity in which any such officer or salaried employee has a material equity or participating interest; or (3) or any partnership in which any such officer or salaried employee has a partnership or participating interest, in each case, relating to or involving the Business, the Assets, or the Assumed Liabilities,

except, in each instance, for existing compensation arrangements listed in Schedule 4.23. Each such contract, agreement, license, lease, arrangement, and commitment was entered into by Seller in the ordinary course of business upon terms that are fair and reasonable to the Business without regard to the status and relationship of such other parties.

4.28 Schedules Yet to Be Prepared. To the best of Seller's knowledge, the Schedules to be prepared as of the Determination Date shall be true and complete when submitted for inclusion in this Agreement and shall set forth all information sought by this Agreement with respect thereto.

4.29 Disclosure. To the best of Seller's knowledge, no representation, warranty, or statement made by Seller in this Agreement or in any document or certificate furnished or to be furnished to Buyer pursuant to this Agreement contains or will contain any untrue statement or omits or will omit to state any fact necessary to make the statements contained herein or therein not misleading. To the best of Seller's knowledge, Seller has disclosed to Buyer all facts known or reasonably available to Seller that are material to the financial condition, operation, or prospects of the Business, the Assets, and the Assumed Liabilities.

4.30 Truth at Closing. All of the representations, warranties, and agreements of Seller contained in this Article IV shall be true and correct and in full force and effect on and as of the Closing Date.

4.31 Materiality Defined. For purposes of this Agreement, each reference to any material adverse effect upon the financial condition, operation, or prospects of the Business (including under ownership by Buyer) or the Assets, or any other reference to a material item or circumstance, shall be construed to include any act, omission, event, or circumstances that would entail loss, liability, damage, or expense to Buyer (with respect to the rights and benefits expected by Buyer to be obtained under this Agreement) of \$10,000 in any single instance, whether under one or more representations, warranties, covenants, or agreements contained herein, or \$30,000 in the aggregate, taken as a whole under all representations, warranties, covenants, and agreements contained herein.

4.32 Disclaimer. Except as expressly set forth in this Agreement or in any document, certificate, agreement, or other instrument furnished or to be furnished to Buyer pursuant to this Agreement, SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE ASSETS OR THE BUSINESS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR, SPECIAL OR ORDINARY PURPOSE. It is agreed that Seller's warranties include only the express written warranties that are contained in this Agreement. Any other express warranties, oral or written, not contained in this Agreement are of no force and effect. Except as otherwise expressly warranted or represented in this Agreement, the Assets are purchased "As Is".

Article V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

5.1 Organization. Buyer is a corporation validly existing and in good standing under the laws of the State of Delaware with the corporate power and authority to conduct its business and to own and lease its properties and assets. Buyer is duly qualified or licensed to do business and is in good standing as a foreign corporation in each state in which the failure to be so qualified or licensed would have a material adverse effect on its financial condition or operations. Further, within a reasonable period after the Closing Date, Buyer will be qualified to do business in the State of Utah.

5.2 Power and Authority. Buyer has the power and authority to execute, deliver, and perform this Agreement and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby, and Buyer has taken all necessary corporate action to authorize the execution and delivery of this Agreement and such other agreements and instruments and the consummation of the transactions contemplated hereby and thereby. This Agreement is, and, when such other agreements and instruments are executed and delivered, the other agreements and instruments to be executed and delivered by Buyer in connection with the transactions contemplated hereby and thereby shall be, the legal, valid, and binding obligation of Buyer, enforceable in accordance with their terms.

5.3 Broker's or Finder's Fees. Buyer has not authorized any person to act as broker, finder, or in any other similar capacity in connection with the transactions contemplated by this Agreement.

5.4 No Conflict. Neither the execution and delivery by Buyer of this Agreement and of the other agreements and instruments to be executed and delivered by Buyer in connection with the transactions contemplated hereby or thereby, nor the consummation by Buyer of the transactions contemplated hereby or thereby will violate or conflict with (1) any federal, state, or local law, regulation, ordinance, governmental restriction, order, judgment, or decree applicable to Buyer, (2) any provision of any charter, bylaw, or other governing or organizational instrument of Buyer, or (3) any material mortgage, indenture, license, instrument, trust, agreement, or other material commitment to which Buyer is a party or by which Buyer is bound.

5.5 Compliance with Securities Laws. To the best of Buyer's knowledge, neither Buyer nor any executive officer, director, affiliate or controlling person of Buyer has committed any violation, or been in any way in contravention, of any applicable law, rule or regulation governing transactions in securities, in connection with the transactions herein.

5.6 Inspection and Value. Based upon Buyer's inspection and Seller's warranties and representations contained in this Agreement, Buyer has formed its own opinion as to the value of Seller's Assets being purchased hereunder. Buyer acknowledges that Buyer has inspected the Assets to the full extent of Buyer's desire, and Seller has given Buyer ample opportunity to conduct such inspections. Buyer recognizes that the success of the Business in which the Assets will be utilized is dependent upon Buyer's skill and ability in managing and operating the Business.

5.7 No Litigation. No actions or proceedings are pending or, to Buyer's best knowledge, threatened before any court, administrative authority, or other authority that might materially and adversely affect Buyer's ability or right to perform all of its obligations hereunder.

5.8 Sufficient Cash. Buyer will have sufficient funds necessary to meet its cash obligations under this Agreement. Buyer is not in bankruptcy or similar proceedings and Buyer is unaware of any business or financial threat which would prevent Buyer from satisfying its obligations hereunder.

Article VI

CONDUCT OF THE BUSINESS PRIOR TO CLOSING

6.1 Course of Business. Seller shall conduct the Business diligently and substantially in the same manner as heretofore conducted, and Seller shall not institute any new methods of accounting or operation or engage in any transaction or activity, enter into any agreement, or make any commitment, except in the ordinary course of such business and consistent with past practice.

6.2 Organization. Seller shall use its best efforts to preserve the Business intact and to preserve for Buyer its relationship with employees, licensors, developers, consultants, remarketers, suppliers, distributors, customers, and others having regular business relations with it.

6.3 Prohibited Actions. In no event, without the prior written consent of Buyer, shall Seller:

a. Liens. Permit any of the Assets to be subjected to any mortgage, pledge, lien, or encumbrance, except for Permitted Liens.

b. Disposition of Assets. Waive any claims or rights of substantial value respecting the Assets, or sell, transfer, or otherwise dispose of any of the Assets, except in the ordinary course of business and consistent with past practice.

c. Licenses. Other than in the ordinary course of its licensing activities and consistent with past practice, dispose of, license, or permit to lapse any rights in any Intellectual Property.

d. Increases in Compensation. Except as otherwise agreed, increase the compensation of officers, employees, or consultants whom Buyer has stated an intention to hire or retain on or after Closing, except in the ordinary course of business.

e. Software Contracts. Enter into any Software Contracts other than in the ordinary course of business and consistent with past practice.

6.4 Insurance; Property. Seller shall maintain the Insurance Policies in effect and shall at all times continue to insure all property constituting the Assets against all ordinary and insurable casualty risks.

Article VII

COVENANTS OF SELLER AND BUYER PRIOR TO CLOSING

7.1 Access. From the date of this Agreement to the Closing Date, Seller shall (1) provide Buyer with such information as Buyer may from time to time reasonably request with respect to the Business and the transactions contemplated by its Agreement; (2) provide Buyer and its officers, counsel, and other authorized representatives access during regular business hours and upon reasonable notice to the books, records, and offices of Seller, as Buyer may from time to time reasonably request; and (3) permit Buyer to make such inspections thereof as Buyer may reasonably request. Any investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of Seller.

7.2 Interim Financials. As promptly as practicable after each month-end or quarter-end, as the case may be, from the date of this Agreement to the Closing Date, Seller shall deliver to Buyer all monthly and quarterly financial reports in the form that it customarily prepares for its internal purposes concerning the Business.

7.3 Updating of Information. From the date of this Agreement to the Closing Date, Seller shall deliver revised or supplementary schedules to this Agreement, containing accurate information as of the Closing Date, in order to enable Buyer to confirm the accuracy of Seller's representations and warranties and otherwise to give full effect to the provisions of this Agreement. Such revised or supplementary schedules shall not modify or be deemed part of this Agreement unless agreed by Buyer in writing with reference to the specific schedules to be so treated.

7.4 Approvals of Third Parties. Seller and Buyer shall make good faith efforts, and shall cooperate with one another, to secure all Required Government Consents, and all Required Contract Consents, and to obtain the satisfaction of the conditions specified in Articles IX and X, as shall be required in order to enable Seller and Buyer to effect the transactions contemplated hereby in accordance with the terms and conditions hereof.

7.5 Third-Party Certificates. Seller shall use its best efforts to procure for the benefit of Buyer consent, assignment, and/or estoppel certificates in such form, from such third parties, and with respect to such Assets to be assigned to Buyer at Closing as Buyer may specify on or before Closing.

7.6 No Default. Neither Seller nor Buyer shall perform any act or omit to perform any act, or permit any act or omission, that will cause a breach or default of any covenant, agreement, warranty, or representation in this Agreement.

Article VIII

ACCOUNTING MATTERS

8.1 Manual Balance Sheet. Seller and Buyer shall jointly monitor, record, and compile the results of operations and the changes in the composition and condition of the Assets and Assumed Liabilities arising between the date of this Agreement and the Closing Date. Prior to Closing, Seller shall, subject to Buyer's review, prepare a balance sheet of the Business, based on regular operating records and procedures, that represents

the Assets and Assumed Liabilities as they exist as near the Closing Date as may practicably be determined. For purposes of this Agreement, the balance sheet so prepared shall be referred to as the "Manual Balance Sheet." In no event shall the Manual Balance Sheet serve as a basis for delaying or avoiding Closing. To the best of Seller's knowledge, the Manual Balance Sheet shall be prepared using accounting principles and practices that are consistent with those used in the preparation of the Financial Statements, except as otherwise required to conform to GAAP.

8.2 Closing Date Balance Sheet. As soon as practicable following Closing (and, in any event, within three (3) weeks after the Closing Date), Buyer shall prepare a balance sheet of the Business as of the Closing Date. For purposes of this Agreement, such balance sheet shall be referred to as the "Closing Date Balance Sheet." To the best of Seller's knowledge, the Closing Date Balance Sheet shall be prepared using accounting principles and practices that are consistent with those used in the preparation of the Financial Statements, except as otherwise required to conform to GAAP.

8.3 Basis for Preparation. In the preparation of the Manual Balance Sheet and the Closing Date Balance Sheet, the Excluded Liabilities shall not be treated as liabilities of the Business, nor shall the Excluded Assets be treated as assets of the Business. Also in the preparation of such balance sheets, the carrying value of the Assets shall be their historical cost and shall not be increased or otherwise adjusted based on any allocation of the Purchase Price. Such balance sheets shall be prepared on the basis that no item should have been excluded for lack of materiality.

Article IX

CONDITIONS TO SELLER'S OBLIGATIONS

Each of the obligations of Seller to be performed hereunder shall be subject to the satisfaction (or waiver by Seller) at or prior to the Closing Date of each of the following conditions:

9.1 Representations and Warranties True at Closing Date. Buyer's representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of such date; Buyer shall have complied with the covenants and agreements set forth herein to be performed by it on or before the Closing Date; and Buyer shall have delivered to Seller a certificate dated the Closing Date and signed by a duly authorized officer of Buyer to all such effects.

9.2 Litigation. No Litigation shall be threatened or pending against Buyer or Seller before any court or governmental agency that, in the reasonable opinion of counsel for Seller, could result in the restraint or prohibition of any such party, or the obtaining of damages or other relief from such party, in connection with this Agreement or the consummation of the transactions contemplated hereby.

9.3 Documents Satisfactory in Form and Substance. All agreements, certificates, and other documents delivered by Buyer to Seller hereunder shall be in form and substance satisfactory to counsel for Seller, in the exercise of such counsel's reasonable judgment.

9.4 Consents. All required Government Consents and Required Contract Consents shall have been obtained.

9.5 Opinion of the Buyer's Counsel. Buyer shall have delivered to Seller an opinion of counsel to the Buyer, dated as of the Closing Date, in form and substance satisfactory to Buyer, to the effect that:

a. **Authorization, Execution, Delivery, and Enforceability.** All corporate action by Buyer required in order to authorize the transactions contemplated by this Agreement and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby has been duly and validly taken; and this Agreement and such other agreements and instruments have been duly executed and delivered by Buyer and constitute the valid and binding obligations of Buyer enforceable in accordance with their terms, except as to (1) such enforcement's being subject to bankruptcy, insolvency, reorganization, moratorium, or other laws relating to creditors' rights, or debtor's moratorium, and (2) the availability of the remedy of specific performance and other forms of equitable relief.

b. **No Conflict.** Neither the execution and delivery of this Agreement by Buyer, and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby, nor the consummation of the transactions contemplated hereby and thereby will violate the Certificate of Incorporation or Bylaws of Buyer.

Article X

CONDITIONS TO BUYER'S OBLIGATIONS

Each of the obligations of Buyer to be performed hereunder shall be subject to the satisfaction (or the waiver by Buyer) at or prior to the Closing Date of each of the following conditions:

10.1 **Representations and Warranties True at Closing Date.** Seller's representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of such date; Seller shall have complied with the covenants and agreements set forth herein to be performed by it on or before the Closing Date; and Seller shall have delivered to Buyer a certificate dated the Closing Date and signed by a duly authorized officer of Seller to all such effects.

10.2 **Performance.** Seller shall have performed and complied with all agreements, obligations, and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing.

10.3 **Investigations.** Neither any investigation of Seller by Buyer, nor the Schedules hereto, nor any other document delivered to Buyer as contemplated by this Agreement, shall have revealed any facts or circumstances that, in the good faith judgment of Buyer, reflect in a material adverse way on the Assets, the Assumed Liabilities, or the business, operations, or prospects of the Business.

10.4 **Consents.** All Required Government Consents and Required Contract Consents shall have been obtained.

10.5 **No Litigation.** No Litigation shall be threatened or pending against Buyer or Seller before any court or governmental agency that, in the reasonable opinion of counsel for Seller, could result in the restraint or prohibition of any such party, or the obtaining of damages or other relief from such party, in connection with this Agreement or the consummation of the transactions contemplated hereby.

10.6 No Material Adverse Change. From the date of this Agreement until the Closing Date, Seller shall not have suffered any material adverse change (whether or not such change is referred to or described in any supplement to the Schedules) to the Assets, the Assumed Liabilities, or the financial condition, operations, or prospects of the Business.

10.7 Opinion of Seller's Counsel. Seller shall have delivered to Buyer an opinion of counsel to Seller, dated as of the Closing Date, in form and substance satisfactory to Buyer, to the effect that:

a. Authorization, Execution, Delivery and Enforceability. All corporate action by Seller required in order to authorize the transactions contemplated by this Agreement and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby has been duly and validly taken; and this Agreement and such other agreements and instruments have been duly executed and delivered by Seller and constitute the valid and binding obligations of Seller enforceable in accordance with their terms, except as to (1) such enforcement's being subject to bankruptcy, insolvency, reorganization, moratorium, or other laws relating to creditor's rights, or debtor's moratorium and (2) the availability of the remedy of specific performance and other forms of equitable relief.

b. No Conflict. The execution and delivery of this Agreement by Seller and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby, and the consummation of the transactions contemplated hereby and thereby, will not contravene the charter or bylaws of Seller.

10.8 Employment Agreement. At or prior to the Closing, Douglas E. Lyman shall have entered into a contract providing for his employment by Buyer in the form attached hereto as Schedule 10.8, the effectiveness of which shall be expressly contingent upon the occurrence of Closing.

Article XI

CLOSING

11.1 Closing. Unless this Agreement is first terminated as provided in Article XVI, the closing of the purchase and sale of the Assets and the transfer and assumption of the Assumed Liabilities (the "Closing") shall take place at the offices of Buyer at National Data Plaza, Atlanta, Georgia 30329 at 9:00 a.m. eastern time (1) on July 14, 1994, or (2) on such other time, date, and place as the parties may agree (the "Closing Date").

11.2 Actions at Closing. At Closing, Buyer and Seller shall take the following actions, in addition to such other actions as may otherwise be required under this Agreement:

a. Consents. Seller shall deliver to Buyer executed originals of all Required Contract Consents and all Required Government Consents.

b. Conveyance Instruments. Seller shall deliver to Buyer such warranty deeds, bills of sale, assignments, and other instruments of conveyance and transfer as Buyer may reasonably request to effect the assignment to Buyer of the Assets.

c. **Entry Into Premises.** Seller shall give Buyer complete and unrestricted access to the facilities of the Business, located at sites subject to the Leases.

d. **Master Copy of Software Programs.** Seller shall deliver to Buyer a master copy of each Software Program (in both source code and object code form).

e. **Payment of Initial Payment.** Buyer shall pay the Initial Payment to Seller in full by wire transfer of immediately available funds to an account designated by Seller.

f. **Assumption Agreement.** Buyer shall deliver to Seller an assumption agreement pursuant to which Buyer assumes and agrees to pay and perform the Assumed Liabilities.

g. **Certificates.** Each party shall deliver the certificates required under Sections 9.1 and 10.1, respectively, as to the accuracy of the representations and warranties contained herein, the compliance with the covenants and agreements contained herein, and the satisfaction of the conditions to Closing contained herein.

h. **Opinion of Seller's Counsel.** Seller shall cause its counsel to deliver to Buyer the legal opinion required under Section 10.7.

i. **Opinion of Buyer's Counsel.** Buyer shall cause its counsel to deliver to Seller the Legal Opinion Required under Section 9.5.

j. **Employment Agreement.** Douglas E. Lyman shall have entered into a contract providing for his employment by Buyer in the form attached hereto as Schedule 10.8.

11.3 Further Assurances. At and after the Closing, without further consideration, Seller shall take all such other reasonable action and shall procure or execute, acknowledge, and deliver all such further certificates, conveyance instruments, consents, and other documents as Buyer or its counsel may reasonably request (1) to vest in Buyer, and perfect and protect Buyer's right, title, and interest in, and enjoyment of, the Assets and the Business, or (2) to ensure more effectively the compliance of Seller with its agreements, covenants, warranties, and representations under this Agreement. Likewise, at and after the Closing, without further consideration, Buyer shall take all such other reasonable action and shall procure or execute, acknowledge, and deliver all such further certificates, conveyance instruments, consents, and other documents as Seller or its counsel may reasonable request to ensure more effectively the compliance of Buyer with its agreements, covenants, warranties, and representations under this Agreement.

Article XII

COVENANTS OF SELLER AND BUYER FOLLOWING CLOSING

12.1 Tax Matters.

a. **Seller's Right and Responsibility for Preclosing Tax Matters.** Seller shall have the right and responsibility to direct the handling of all tax matters affecting or relating to the conduct of the Business prior to the Closing Date, including the prosecution of all administrative and judicial

remedies, the settlement of all issues, and the execution of agreements, consents, or waivers, extending the statute of limitations, provided that no such action, agreement, or stipulation shall have any effect on the tax position or liability of Buyer, including as successor to the Business, or result in any increase in the Assumed Liabilities.

b. Buyer's Cooperation. Buyer shall use its reasonable efforts to provide Seller such assistance as it may reasonably request in connection with matters relating to taxes, including information with respect to Seller's preparation of any returns of taxes, any audit or other examination by any taxing authority, any judicial or administrative proceeding relating to Seller's liability for taxes, or any claims arising hereunder respecting the Business. Buyer shall retain and provide Seller with records or information which may be relevant to any such return, audit, examination, proceeding, or determination, and Buyer shall retain all such books and records for so long as necessary in keeping with applicable statutes of limitations.

12.2 Allocation of Purchase Price. The Purchase Price shall be allocated to the Assets and Assumed Liabilities as set forth in Schedule 12.2, and all tax returns and reports filed by Seller and Buyer with respect to the transactions contemplated by this Agreement shall be consistent with that allocation.

12.3 Transfer Taxes. All sales, transfer, and similar taxes and fees (including all recording fees, if any) incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Seller and Seller shall file all necessary documentation with respect to such taxes.

12.4 No-Compete. For a period of five (5) years after the Closing Date, neither Seller nor any Guarantor shall engage in the business of acquiring, developing, marketing, distributing, licensing, or maintaining systems and application computer programs having any function similar to, competitive with, or substitutable for, the Software Programs in the medical and/or dental practice management systems markets, anywhere in North America, South America, Europe, Australia, and/or New Zealand, except as a customer or authorized distributor of Buyer or otherwise with Buyer's consent (which may be withheld in Buyer's sole discretion). Seller acknowledges and agrees that the current market for the Software Programs extends throughout the entire territory, and it is therefore reasonable to prohibit Seller from competing with Buyer anywhere in such territory. Seller shall not engage in any such activity, directly or indirectly, on its own behalf or in the service of or on behalf of others.

12.5 Nonsolicitation of Personnel. For a period of five (5) years after the Closing Date, neither Seller nor any Guarantor shall solicit, divert, or recruit, for its own benefit or for the benefit of any other person or entity, any employee of the Business whom Buyer has expressed interest in hiring or retaining.

12.6 Business Location. Buyer hereby agrees that the Business shall remain in the metropolitan Salt Lake City, Utah area for not less than two years after the Closing Date.

Article XIII

CERTAIN TRANSITION MATTERS

13.1 Hiring of Employees. Seller shall use its best efforts to enable Buyer to hire, on such terms as Buyer may reasonably establish, such of the employees of the Business associated with the operation or management of the Business as Buyer may specify in Schedule 13.1 on or before Closing.

13.2 COBRA. Seller shall be responsible for the collection of premiums and all related costs of benefits offered under the continuation of benefits provisions of the Consolidated Omnibus Budget Reconciliation Act for all employees of the Business and their dependents not kept in the continuous employ of Seller following Closing.

Article XIV

INDEMNITY

14.1 Indemnification by Seller. Seller shall indemnify, defend, and hold harmless Buyer and its respective successors and assigns and the directors, officers, employees, and agents of each (collectively, the "Buyer Group"), at, and at any time after, the Closing, from and against any and all demands, claims, actions, or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other reasonable expenses of investigation, handling, and litigation, and settlement amounts, together with interest and penalties (collectively, a "Loss" or "Losses"), asserted against, resulting to, imposed upon, or incurred by the Buyer Group, directly or indirectly, by reason of, resulting from, or arising in connection with any of the following:

a. Breach of Obligation. Any material breach of any representation, warranty, or agreement of Seller contained in or made pursuant to this Agreement, including the agreements and other instruments contemplated hereby.

b. Excluded Liabilities. Any liabilities or obligations of any kind or nature whatsoever, whether accrued, absolute, contingent, or otherwise, known or unknown, arising out of or in connection with the conduct of the Business or the ownership or use of the Assets prior to the Closing Date, except for the Assumed Liabilities (including the liabilities described in Section 2.1.e. and, to the extent applicable, Section 2.2.e.).

c. Failure to Obtain Consents. Any failure to obtain the Required Government Consents or the Required Contract Consents.

d. Noncompliance with Bulk Sales Law. Any failure to comply with any "bulk sales" or similar laws relating to notices to creditors.

e. Incidental Matters. To the extent not covered by the foregoing, any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other reasonable expenses of investigation, handling, and litigation, and settlement amounts, together with interest and penalties, incident to the foregoing.

14.2 Indemnification by Buyer. Buyer shall indemnify, defend, and hold harmless Seller and its successors and assigns and the directors, officers,

employees, and agents of each (collectively, the "Seller Group"), at, and at any time after, the Closing, from and against any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other reasonable expenses of investigation, handling, and litigation, and settlement amounts and including any net income tax amount associated with all such indemnification recoveries (collectively, a "Loss" or "Losses"), asserted against, resulting to, imposed upon, or incurred by the Seller Group, to the extent arising from any of the following:

a. **Breach of Obligation.** Any breach of any representation, warranty, or agreement of Buyer contained in or made pursuant to this Agreement, including the agreements and other instruments contemplated hereby.

b. **Assumed Liabilities.** Any of the Assumed Liabilities, except insofar as such Loss represents an Excluded Liability.

c. **Incidental Matters.** To the extent not covered by the foregoing, any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other expenses of investigation, handling, and litigation, and settlement amounts, together with interest and penalties, incident to the foregoing.

14.3 Notice of Claim. The party entitled to indemnification hereunder (the "Claimant") shall promptly deliver to the party liable for such indemnification hereunder (the "Obligor") notice in writing (the "Required Notice") of any claim for recovery under Section 14.1 or Section 14.2, specifying in reasonable detail the nature of the Loss, and, if known, the amount, or an estimate of the amount, of the liability arising therefrom (the "Claim"). The Claimant shall provide to the Obligor as promptly as practicable thereafter information and documentation reasonably requested by the Obligor to support and verify the claim asserted, provided that, in so doing, it may restrict or condition any disclosure in the interest of preserving privileges of importance in any foreseeable litigation.

14.4 Defense. If the facts pertaining to the Loss arise out of the claim of any third party (other than a member of the Buyer Group or Seller Group, whichever is entitled to indemnification for such matter) available by virtue of the circumstances of the Loss, the Obligor may assume the defense or the prosecution thereof, including the employment of counsel or accountants, at its cost and expense. The Claimant shall have the right to employ counsel separate from counsel employed by the Obligor in any such action and to participate therein, but the fees and expenses of such counsel employed by the Claimant shall be at its expense. The Claimant shall have the right to determine and adopt (or, in the case of a proposal by Obligor, to approve) a settlement of such matter in its reasonable discretion, except that Claimant need not consent to any settlement that (1) imposes any nonmonetary obligation or (2) Obligor does not agree to pay in full. The Obligor shall not be liable for any settlement of any such claim effected without its prior written consent, which shall not be unreasonably withheld. Whether or not the Obligor chooses to so defend or prosecute such claim, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information, and testimony, and attend such conferences, discovery proceedings, hearings, trials, and appeals, as may be reasonably requested in connection therewith.

14.5 Offset for Insurance Recoveries and Tax Benefits. The amount of any Loss recovered by a Claimant shall be reduced by the amount, if any, of any insurance recovery or net tax benefit then or thereafter realized by the Claimant with respect to such Loss but only to the extent of any amount actually exceeding the amount necessary to make the Claimant whole for the entire Loss (and giving consideration, for such purpose, to any tax detriment the Claimant may realize from the Insurance, indemnification, or other recoveries the Claimant may obtain with respect to such Loss). To the extent such an insurance recovery or net tax benefit is thereafter realized, the Claimant shall reimburse the Obligor for the amount of any such insurance recovery or net tax benefit when and as realized at any time. For purposes of this Section, "net tax benefit" shall mean the actual tax savings realized in any period as a result of the Claimant's treatment of a Loss as an item of deduction or credit for purposes of federal and/or state income taxes. Net tax benefits shall be calculated according to the incremental effect on tax liability that the inclusion of the pertinent deduction or credit would create in any relevant period, assuming all other tax deductions to be the same. Unless disputed as having been prepared in bad faith or without reference to supporting evidence, a certificate furnished by the tax department or counsel of the Claimant (or, if such certificate is disputed, a letter from the regular independent certified public accounting firm of the Claimant) as to the amount of any such net tax benefit shall be final and binding for purposes hereof.

Article XV

CONFIDENTIALITY

15.1 Confidentiality Obligation of Buyer Prior to Closing. Until Closing (and, if this Agreement is terminated for any reason, forever thereafter), Buyer shall, and shall use its best efforts to cause its personnel and agents to, hold in strict confidence, not disclose to any person without the prior written consent of Seller, and not use in any manner except in connection with the transactions contemplated hereby, any confidential business or technical information obtained from Seller in connection with the transactions contemplated hereby concerning the Business or the Assets. This obligation shall cease to apply to Buyer upon the occurrence of Closing. In the event that this Agreement terminates for any reason, Buyer shall return to Seller or destroy all materials in its possession containing any such confidential information, including all copies, extracts, adaptations, and transcriptions thereof.

15.2 Confidentiality Obligation of Seller Following Closing. Following the occurrence of Closing, Seller shall, and shall use its best efforts to cause its personnel and agents to, hold in strict confidence, not disclose to any person without the prior written consent of Buyer, and not use in any manner whatsoever, any confidential business or technical information remaining in its possession concerning the Business or the Assets. Such confidential information specifically includes all source code, system and user documentation, and other Technical Documentation pertaining to the Software Programs, including any proposed design and specifications for future products and products in development, marketing plans, and all other technical and business information concerning the Business. Promptly following Closing, Seller shall surrender to Buyer or destroy all materials remaining in its possession containing any such confidential information, including all copies, extracts, adaptations, and transcriptions thereof.

15.3 Permitted Disclosures. Notwithstanding Sections 15.1 and 15.2, either party may disclose confidential information where necessary (1) to any regulatory authorities or governmental agencies pursuant to legal process or (2) if required by court order or decree.

15.4 Scope of Confidential Information. For purposes of this Agreement, information shall not be deemed confidential (1) if such information is available in full from public sources; (2) if such information is received from a third party not under an obligation to keep such information confidential; or (3) if the recipient can conclusively demonstrate that such information was independently developed by the recipient without reference to or use of confidential information.

Article XVI

TERMINATION PRIOR TO CLOSING

16.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing:

a. **Mutual Consent.** By the mutual consent of Buyer and Seller;

b. **Deadline.** By Buyer or Seller, in writing, without liability, if the Closing shall not have occurred on or before August 1, 1994; or

c. **Material Breach.** By Buyer or Seller in writing, without liability, if the other party shall (1) fail to perform in any material respect its agreements contained herein required to be performed by, in, on or prior to the Closing Date or (2) materially breach any of its representations, warranties, agreements, or covenants contained herein, provided that such failure or breach is not cured within ten (10) days after such party has been notified of the other party's intent to terminate this Agreement pursuant hereto.

16.2 Termination of Obligations. Termination of this Agreement pursuant to this Article XVI shall terminate all obligations of the parties hereunder, except for the obligations set forth in Article XV.

Article XVII

MISCELLANEOUS

17.1 Entire Agreement. This Agreement (including the Schedules), and the other certificates, agreements, and other instruments to be executed and delivered by the parties in connection with the transactions contemplated hereby; constitute the sole understanding of the parties with respect to the subject matter hereof. No amendment, modification, or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

17.2 Parties Bound by Agreement; Successors and Assigns. The terms, conditions, and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and assigns thereof. Without the prior written consent of the other party, neither party may assign its rights, duties, or obligations hereunder or any part thereof to any other person or entity. Any such consent shall not be unreasonably withheld or delayed.

17.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

17.4 Headings. The headings of the Sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

17.5 Modification and Waiver. Any of the terms or conditions of this Agreement may be waived in writing at any time by the party that is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar).

17.6 Expenses. Seller and Buyer shall each pay all costs and expenses incurred by it or on its behalf in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of its own financial consultants, accounts, and counsel.

17.7 Notices. Any notice, request, instruction, or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Seller to:

Lytec Systems, Inc.
7050 Union Park Center
Suite 390
Midvale, Utah 84047

Attention: Douglas E. Lyman

if to Guarantors:

Douglas E. and Teri L. Lyman
3618 Folker Circle
Salt Lake City, Utah 84109

if to Buyer to:

National Data Corporation
National Data Plaza
Atlanta, Georgia 30329-2010

Attention: Office of Corporate Secretary

or at such other address for a party as shall be specified by like notice. Any notice that is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party (or its agent for notices hereunder). Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail.

17.8 Bulk Sales Law. The parties waive compliance with any bulk sales laws or similar laws relating to notices to creditors.

17.9 Governing Law, Forum and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah and the federal laws of the United States of America applicable therein. Buyer consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in courts sitting in Salt Lake City, County of Salt Lake, in the State of Utah and Buyer consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts.

17.10 Public Announcements. Seller and Buyer shall consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement and the transactions contemplated hereby. Neither Seller nor Buyer shall issue any such press release or make any public statement without the agreement of the other party, except as such party's counsel advises in writing may be required by law.

17.11 Third-Party Beneficiaries. With the exception of (1) the parties to this Agreement and (2) the Buyer Group and the Seller Group with respect to the matters inuring to their benefit under Article XIV, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

17.12 "Including." Words of inclusion shall not be construed as terms of limitation herein, so that references to "included" matters shall be regarded as nonexclusive, noncharacterizing illustrations.

17.13 References. Whenever reference is made in this Agreement to any Article, Section, or Schedule, such reference shall be deemed to apply to the specified Article or Section of this Agreement or the specified Schedule to this Agreement.

17.14 Survival of Agreements. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of this Agreement and the Closing.

17.15 Guaranty. Subject to the other provisions of this Section 17.15, Guarantors hereby unconditionally guarantee the performance of Seller under this Agreement and waive presentation to, demand for payment from and protest to Seller of any of the obligations hereby guaranteed, provided that demands for payment from or protest to Seller are also made to Guarantors. This guaranty is a continuing guarantee and shall extend to and cover every extension or renewal of, and every obligation accepted in substitution for and every modification of any obligation guaranteed hereby. No delay on Buyer's part in exercising any right hereunder, or in taking any action to collect or enforce any obligation hereby guaranteed, shall operate as a waiver of any such right or in any manner prejudice Buyer's rights against Guarantors. Guarantors waive any requirement that Buyer exhaust any right or take any action against Seller. The foregoing notwithstanding, the above-referenced guarantee shall be and is hereby limited as follows:

a. The maximum guarantee hereunder for both guarantors, for all matters cumulatively, shall not exceed the total of (x) one million two hundred thousand dollars (\$1,200,000), (y) fifty three point three three percent (53.33%) of any payments actually made to Seller under Sections 3.2.b.

and 3.2.c., and (z) one hundred percent (100%) of any payments that may be earned, but have not been paid to Seller, under Sections 3.2.b. and 3.2.c.

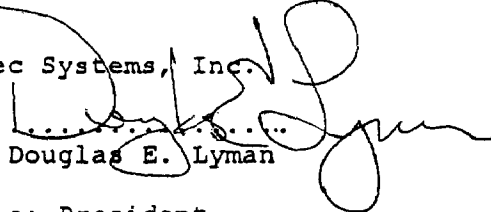
b. The guarantee shall cease and have no further application on July 14, 1998.

17.16 Schedules Complete. Seller and Buyer each hereby acknowledge and agree that Seller has provided Buyer two bound volumes of due diligence materials. The first was provided May 19, 1994, and the final volume was received by Buyer July 8, 1994. It is hereby acknowledged and agreed that in the event that any materials contained in such volumes should have been included in or referenced in the Agreement or any schedule thereto, then it shall be assumed that such reference was in fact included for all purposes, and Seller shall incur no liability as a result of the failure to include such materials.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf on the date indicated.

SIGNATURES ON NEXT PAGE

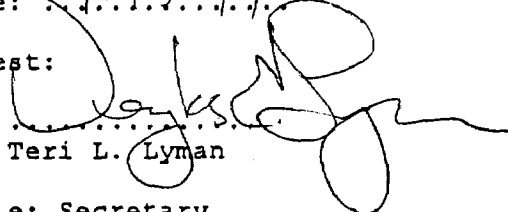
Lyttec Systems, Inc.

By: 
Douglas E. Lyman

Title: President

Date: 7-15-94

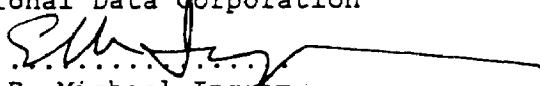
Attest:

By: 
Teri L. Lyman

Title: Secretary

[Corporate seal]

National Data Corporation

By: 
E. Michael Ingram

Title: Senior Vice President

Date: 7-15-94

Attest:

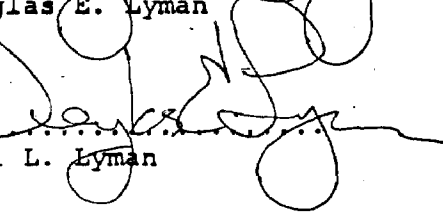
By: 
.....

Title: Senior Vice President

[Corporate seal]

Guarantors:


.....
Douglas E. Lyman


.....
Teri L. Lyman

by: Douglas E. Lyman
Attorney-in-fact for
Teri L. Lyman

Schedule 1.1.1 - Intellectual Property

The following is a list of software products developed and currently marketed by Seller:

Lytec Medical for DOS

Medical practice management, billing, and scheduling software.

Lytec Dental for DOS

Dental practice management, billing, and scheduling software.

Lytec Personal Finance

Personal finance software for DOS.

Lytec Professional Scheduler

A "pop-up" scheduling software program for DOS.

Lytec Port

A general purpose data import utility for both Lytec Medical and Lytec Dental

Lytec Medical for Windows

Medical practice management, billing, and scheduling software.

Lytec Dental for Windows

Dental practice management, billing, and scheduling software.

Lytec Enterprise

Personal finance, scheduling,, and contact management software for Windows.

CYMA products listed in schedule 1.1.g.

Other Intellectual Property:

"Lytec" trademark

Original program source code and related materials

