

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
WAYWIRE, LLC Waywire, Inc.		10/24/2013 12/17/2013	LIMITED LIABILITY CORPORATION: COMPANY: DELAWARE

RECEIVING PARTY DATA

Name:	MAGNIFY NETWORKS, INC.
Street Address:	135 WEST 29TH ST., SUITE 702
City:	NEW YORK
State/Country:	NEW YORK
Postal Code:	10001
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Serial Number:	85579763	WAYWIRE

CORRESPONDENCE DATA

Fax Number:  
*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

Email: chris@magnify.net  
 Correspondent Name: MAGNIFY NETWORKS, INC.  
 Address Line 1: 135 WEST 29TH ST., SUITE 702  
 Address Line 4: NEW YORK, NEW YORK 10001

NAME OF SUBMITTER:	Christopher Conetta
Signature:	/Christopher D. Conetta/
Date:	12/17/2013

Total Attachments: 29  
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OP \$40.00 85579763



**ASSET PURCHASE  
AGREEMENT**

**BY AND BETWEEN**

**MAGNIFY NETWORKS, INC.**

**AND**

**WAYWIRE, INC.**

**Dated as of October 24, 2013**

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<u>Exhibit</u>	<u>Description</u>
Exhibit A	General Assignment
Exhibit B	Joinder and Distribution Agreement

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of October 24, 2013, by and between Magnify Networks, Inc., a Delaware corporation ("Buyer") and Waywire, Inc., a Delaware corporation ("Company").

### RECITALS

A. The Boards of Directors of each of Company and Buyer believe it is in the best interests of each company and their respective stockholders that Buyer acquire the Purchased Assets (as defined below) (the "Acquisition").

B. Subject to the terms and conditions of this Agreement, Buyer will purchase and Company will sell the Purchased Assets (as defined below) in consideration for shares of Buyer's Common Stock (as defined below).

C. Company and Buyer desire to make certain representations and warranties and enter into other agreements in connection with the Acquisition.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

1.1 Capitalized Terms. The following capitalized terms shall have the meanings set forth below:

(a) "Books and Records" means copies of all papers and records (in paper or electronic format) in Company's care, custody, or control, including without limitation, all purchasing and sales records, customer and vendor lists, accounting and financial records, product documentation, product specifications and marketing requirement documents.

(b) "Buyer Common Stock" means the Common Stock of the Buyer, par value \$0.0001.

(c) "Business" means all operations and activities of Company as currently conducted and as have been proposed or contemplated to be conducted, including the design, development, marketing, offering, operation, distribution, sale and licensing out of the Product.

(d) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(e) "Contract" means any mortgage, indenture, lease, contract, covenant or other agreement, instrument or commitment, permit, concession, franchise or license.

(f) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(g) "ERISA Affiliate" means each Person or entity under common control with the Company or any of its subsidiaries within the meaning of Section 414(b), Section 414(c), Section 414(m) or Section 414(o) of the Code and the regulations issued thereunder.

(h) “GAAP” means United States generally accepted accounting principles consistently applied.

(i) “Governmental Entity” means any court, administrative agency or commission or other federal, state, county, local or foreign governmental authority, instrumentality, agency or commission.

(j) “Intellectual Property Rights” means any or all of the following and all statutory and/or common law rights throughout the world in, arising out of, or associated therewith: (i) all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof (“Patents”); (ii) all inventions (whether patentable or not), invention disclosures and improvements, all trade secrets, proprietary information, know how and technology; (iii) all works of authorship, copyrights, mask works, copyright and mask work registrations and applications; (iv) all industrial designs and any registrations and applications therefor; (v) all trade names, logos, trademarks and service marks; trademark and service mark registrations and applications; (vi) all databases and data collections (including knowledge databases, customer lists and customer databases); (vii) all rights in Software; (viii) any similar, corresponding or equivalent rights to any of the foregoing; and (ix) all goodwill associated with any of the foregoing.

(k) “Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind whatsoever in respect of such asset other than non-exclusive licenses to Intellectual Property Rights obtained by Company in the ordinary course of business.

(l) “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group of any of the foregoing.

(m) “Product” means (i) the www.waywire.com website (“Company Website”); (ii) the “Waywire” mobile applications (“Company Apps”); (iii) any services offered in connection with the Company Website and Company Apps; (iv) any and all versions and releases of, and any modifications, updates, enhancements, or new products under development by Company relating to, any of the foregoing; and (v) any and all documentation and training materials related to any of the foregoing.

(n) “Registered Intellectual Property” means all United States, international and foreign: (i) Patents and Patent applications (including provisional applications); (ii) registered trademarks or service marks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks or service marks; (iii) registered copyrights and applications for copyright registration; and (iv) any other Intellectual Property Rights that are the subject of an application, certificate, filing, registration or other document issued, filed with or recorded by any Governmental Entity.

(o) “Software” means any and all computer software and code, including assemblers, applets, compilers, source code, object code, data (including image and sound data), design tools and user interfaces, in any form or format, however fixed. Software shall include source code listings and documentation.

(p) “Tangible Property” means all furniture, fixtures, equipment (including motor vehicles, testing equipment, factory test equipment, IT equipment), computer hardware, office equipment and apparatuses, tools, machinery and supplies and other tangible property (other than inventory, Software, shrink wrap code) of every kind owned or leased (wherever located and whether or not carried on the Books and Records), together with any express or implied warranty by the manufacturers, sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.



(q) “**Technology**” means all technology, including all know-how, show-how, techniques, design rules, trade secrets, inventions (whether or not patented or patentable), algorithms, routines, Software, files, databases, works of authorship, processes, devices, prototypes, schematics, test methodologies, development tools, any media on which any of the foregoing is recorded and any other tangible embodiments of any of the foregoing.

(r) “**Transferred Intellectual Property Rights**” means all Intellectual Property Rights owned or transferable by Company, including: (i) all Intellectual Property Rights embodied by, or which would be infringed by the making, using, offering for sale, selling, importing, copying, modifying, distributing or other exploitation of, the Product, the Transferred Technology or operation of the Business and (ii) all Intellectual Property Rights related to, or necessary for, the operation of the Business, but excluding any Intellectual Property Rights that are a part of the Excluded Assets.

(s) “**Transferred Tangible Property**” means all Tangible Property owned or transferable by the Company, including the Tangible Property set forth on Schedule 2.1(p), but excluding any Tangible Property that is part of the Excluded Assets.

(t) “**Transferred Technology**” means all Technology owned or transferable by Company, including the Technology constituting the Product, but excluding any Technology that is a part of the Excluded Assets. To the extent that any Software constitutes Transferred Technology, all versions and releases of such Software, and Software from which such Software was derived, in both source and object code form, shall be included as Transferred Technology.

## ARTICLE II

### THE PURCHASE AND SALE

2.1 **Purchase and Sale.** At the Closing (as defined below) and subject to and upon the terms and conditions of this Agreement, Company hereby sells, transfers, conveys and assigns to Buyer, and Buyer hereby purchases from Company, free and clear of all Liens, all of Company’s right, title and interest in, to and under all of its assets, properties and rights of every kind and description, real, personal or mixed, tangible or intangible, absolute or contingent, wherever located, whether or not reflected on the Books and Records of Company (the “**Assets**”), except for the Excluded Assets (collectively, the “**Purchased Assets**”). Without limiting the foregoing, the Purchased Assets shall include each of the following:

- (a) The Transferred Technology;
- (b) The Transferred Intellectual Property Rights;
- (c) The Transferred Tangible Property;
- (d) All Books and Records;
- (e) All goodwill associated with the Company;
- (f) The Purchased Cash (as defined below);

(g) Claims, deposits, prepayments, refunds, causes of action, chooses in action, rights of recovery, rights of set off, and rights of recoupment relating to any of Purchased Assets described above (excluding any such item relating to Taxes);

(h) Permits, licenses, orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies relating to any of Purchased Assets described above; and

(i) All rights to recover past, present and future damages for the breach, infringement or misappropriation, as the case may be, relating to any of Purchased Assets described in items (a) through (h) above.

2.2 Excluded Assets. Notwithstanding anything contained in this Agreement to the contrary, the Buyer shall not purchase or assume responsibility for any Assets that are not included in the definition of Purchased Assets (the “Excluded Assets”) and such Excluded Assets shall be retained by Company. Without limiting the foregoing, the Excluded Assets shall include each of the following:

(a) all Contracts, including any rights licensed from third parties that are not transferable; and

(b) any other Assets listed on Schedule 2.2(b).

2.3 Excluded Liabilities. Prior to the Closing, Company shall have discharged and satisfied in full all liabilities of the Company incurred prior to the Closing, including all accounts payable. Accordingly, Buyer shall not assume and shall not be deemed to have assumed or be liable or responsible in any respect for any debts, obligations, claims, actions, causes of action, demands, damages, settlements, judgments, awards, fines, penalties, fees, charges, injuries, losses, costs, expenses, duties or liabilities of Company or any affiliate of Company, whether known or unknown, fixed or contingent, certain or uncertain including, but not limited to, all liabilities of Company or any of its subsidiaries to the extent related to any current or former employee, director or consultant of Company or any of its subsidiaries (each, an “Employee”) and all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Company of the employment of any Employee (collectively, the “Excluded Liabilities”), and Company shall remain responsible for all Excluded Liabilities. Company shall indemnify and hold Buyer harmless from any and all Excluded Liabilities.

2.4 The Closing. The closing of the Acquisition (the “Closing”) will take place on October \_\_\_, 2013, at the offices of Wilson Sonsini Goodrich & Rosati, 1301 Avenue of the Americas, 40<sup>th</sup> Floor, New York, NY 10019, unless another place or time is mutually agreed to in writing by Buyer and Company. The date upon which the Closing actually occurs is herein referred to as the “Closing Date.”

2.5 Purchase Price; Allocation of Consideration.

(a) Purchase Price. Subject to adjustment pursuant to Section 2.5(d), the aggregate purchase price to be paid by Buyer to Company for the Purchased Assets shall be 971,000 shares of Buyer Common Stock as of the Closing Date (the “Consideration”).

(b) Payment of Consideration. The Consideration shall be paid to Company at the Closing by the delivery of one stock certificate, which shall evidence the Consideration.

(c) Tax-Free Reorganization. The parties intend that the transactions contemplated by this Agreement will constitute a tax-free reorganization pursuant to Section 368(a)(1)(C) of the Code. This Agreement is adopted as a “plan of reorganization within the meaning of Treas. Reg. §1.368-2(g), in pursuance of which the Company shall liquidate in accordance with Section 368(a)(2)(G) of the Code and

Section 5.8 hereof and distribute the shares of Buyer Common Stock to Company's stockholders and/or creditors.

(d) Purchased Cash.

(i) At the Closing Date, Company shall prepare and deliver to Buyer a statement, reasonably acceptable to Buyer, of the cash and cash equivalents of Company (the "Purchased Cash") setting forth the Purchased Cash as of the Closing Date (the "Closing Purchased Cash Statement"). The Closing Purchased Cash Statement shall fairly and accurately present the Purchased Cash without giving effect to the consummation of the transactions contemplated by this Agreement (unless otherwise specified herein).

(ii) If the Purchased Cash (as adjusted pursuant to Section 5.2) is equal to, or less than, \$100,000, then the Consideration shall be equal to 776,452 shares of Buyer Common Stock.

(iii) If the Purchased Cash (as adjusted pursuant to Section 5.2) is greater than \$100,000 but less than \$150,000, then the Consideration shall be the number of shares of Buyer Common Stock equal to the sum of (A) 776,452 plus (B) 194,548 multiplied by the Adjustment Amount. The "Adjustment Amount" means the number equal to (x) the amount of Purchased Cash minus 100,000 divided by (y) 50,000.

(iv) If the Purchased Cash (as adjusted pursuant to Section 5.2) is equal to, or greater than \$150,000, then there shall be no adjustment to the Consideration.

2.6 Deliveries by Company. At the Closing, Company shall, at Company's sole cost, in the manner and form, and to the locations, reasonably specified by Buyer, deliver to Buyer:

(a) All of the Purchased Assets, or in the case of the Transferred Intellectual Property Rights or other intangible assets, such instruments as are necessary or desirable to document and transfer title to such assets from Company to Buyer in accordance with Section (d) below. Without limiting the foregoing, all Software included in the Transferred Technology, shall, at Buyer's request, be delivered to Buyer by electronic means. Company shall not retain in its possession or control any Transferred Technology or any copy thereof;

(b) A certificate of the Secretary of State of the State of Delaware dated as of the Closing Date to the effect that Company is legally existing and in good standing under the laws of such state;

(c) A certificate of the appropriate governmental authorities of the State of Delaware dated as of the Closing Date to the effect that Company has filed all tax returns required to be filed and has no outstanding tax liability (so-called "tax good standing" certificates);

(d) A properly executed statement in a form reasonably acceptable to Buyer for purposes of satisfying Buyer's obligations under Treasury Regulation Section 1.1445-2(b)(2); and

(e) A cash payment in immediately available funds in equal to all cash and cash equivalents of Company to one or more accounts designated in writing by Buyer prior to the Closing.

2.7 Assignments

. Without limiting the foregoing, at the Closing, Company shall deliver to Buyer, duly executed by Company: (a) a General Assignment and Bill of Sale substantially in the form of Exhibit A hereto (the "General Assignment"); (b) assignments of the Transferred Intellectual Property Rights in a form acceptable to Buyer and otherwise suitable for filing in all relevant jurisdictions; and (c) such other good and sufficient instruments of conveyance, assignment and transfer, in form and substance reasonably acceptable to Buyer's counsel, as shall be effective to vest in Buyer good and valid title in and to the Purchased Assets (the General Assignment and the other instruments referred to in clauses (a), (b) and (c) being collectively referred to herein as the "Collateral Agreements").

2.8 Further Assurances; Post-Closing Cooperation.

(a) At any time or from time to time after the Closing, at Buyer's request and without further consideration, Company shall: (i) execute and deliver to Buyer such other instruments of sale, transfer, conveyance, assignment and confirmation; (ii) provide such materials and information; and (iii) take such other actions, as Buyer may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to Buyer, to confirm Buyer's title to, all of the Purchased Assets, and, to the full extent permitted by law, to put Buyer in actual possession and operating control of the Purchased Assets and to assist Buyer in exercising all rights with respect thereto, and otherwise to cause Company to fulfill its obligations under this Agreement and the Collateral Agreements.

(b) Effective on the Closing Date, Company hereby constitutes and appoints Buyer the true and lawful attorney of Company, with full power of substitution, in the name of Company or Buyer, but on behalf of and for the benefit of Buyer: (i) to demand and receive from time to time any and all of the Purchased Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (ii) to institute, prosecute, compromise and settle any and all actions, suits, proceedings, arbitration, or governmental or regulatory investigations or audits ("Actions or Proceedings") that Buyer may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Purchased Assets; (iii) to defend or compromise any or all Actions or Proceedings in respect of any of the Purchased Assets; and (iv) to do all such acts and things in relation to the matters set forth in the preceding clauses (i) through (iii) as Buyer shall deem necessary or desirable; provided, however, that if any of the actions authorized by this Section 2.8(b) could reasonably be determined to result in a claim for indemnification by Buyer against Company, then Buyer shall not take any such actions without prior written approval of the Company. Company hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Company shall deliver to Buyer at the Closing an acknowledged power of attorney to the foregoing effect executed by Company.

2.9 Deliveries by Buyer. At the Closing, Buyer shall deliver the following:

(a) The Consideration; and

(b) A certificate of the Secretary of Buyer dated as of the Closing Date certifying as to Buyer's Certificate of Incorporation, Bylaws and resolutions of the Board of Directors of Buyer relating to the transactions contemplated hereby.

2.10 Transfer Taxes. Company shall be responsible for and shall timely pay any and all transfer, documentary, registration, recordation, sales, use, value added, goods and services, gross receipts, excise and other similar taxes and fees assessed upon or incurred with respect to the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer ("Transfer Taxes"). To the extent permitted by applicable law, the parties shall cooperate with each other to minimize any Transfer Taxes.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES OF COMPANY

Company, subject to such exceptions as are disclosed in the disclosure schedules delivered by Company to the Buyer concurrently with the execution and delivery of this Agreement (the “Disclosure Schedules”), represent and warrant to the Buyer, on the date hereof and as of the Closing Date, as follows:

3.1 Organization of Company. Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is not qualified to do business as a foreign corporation in any other jurisdiction. Company has the corporate power to own its properties and to carry on the Business. Company has delivered a true and correct copy of its Certificate of Incorporation and Bylaws, each as amended to date, to Buyer.

3.2 Company Capital Structure.

(a) The authorized capital stock of Company consists of 24,500,000 shares, of which 16,000,000 shares are designated as Common Stock, 8,000,000 shares of which are issued and outstanding, 4,500,00 shares are designated as Preferred Stock, of which 3,994,696 are issued and outstanding (the outstanding Common Stock and Preferred Stock is hereinafter collectively referred to as the “Company Capital Stock”). All outstanding shares of Company’s Capital Stock are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the Certificate of Incorporation or Bylaws of Company or any agreement to which Company is a party or by which it is bound.

(b) There is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Company; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Company; (iii) contract under which Company is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities; or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any person to the effect that such person is entitled to acquire or receive any shares of capital stock or other securities of Company. All outstanding shares of Company Capital Stock have been issued and granted in compliance with (x) all applicable securities laws and other applicable legal requirements, and (y) all requirements set forth in applicable contracts. As of the date hereof, Company Capital Stock is held by the Persons with the domicile addresses and in the amounts set forth on Section 3.2(b) of the Disclosure Schedule, which further sets forth for each such Person the number, class and series of shares held by such Person, the percentage held by such Person relative to each class or series of shares such Person owns and the total issued and outstanding shares of Company Capital Stock as of the date hereof, and the number of the applicable stock certificates representing such shares.

(c) Company has never repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities of Company.

3.3 Subsidiaries. Company does not have and has never had any subsidiaries or affiliated companies and does not otherwise own and has never otherwise owned any shares of capital stock or any interest in, or control, directly or indirectly, any other corporation, partnership, association, joint venture or other business entity.

3.4 Authority. Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this

Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Company. Company's Board of Directors and stockholders duly approved the Acquisition, this Agreement and the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Company and constitutes the valid and binding obligation of Company, enforceable in accordance with its terms except as such enforceability may be limited by principles of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. The execution and delivery of this Agreement and the Collateral Agreements by Company does not, and, as of the Closing, the consummation of the transactions contemplated hereby will not: (i) conflict with, or result in any violation of, any provision of the Certificate of Incorporation or Bylaws of Company; (ii) result in a violation of any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Company, the Business or the Purchased Assets; or (iii) result in an imposition of a Lien on any of the Purchased Assets (any such event, a "Conflict"). No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any third party (so as not to trigger any Conflict), is required by or with respect to Company in connection with the execution and delivery of this Agreement or the Collateral Agreements or the consummation of the transactions contemplated hereby.

3.5 Company Financial Statements. Section 3.5 of the Disclosure Schedule sets forth the following financial statements and notes (a) Company's unaudited balance sheet as of December 31, 2012 and the related unaudited statements of income, cash flows and stockholders' equity for the twelve months then ended and (b) Company's unaudited balance sheet as of September 30, 2013 (the "Balance Sheet Date"), and the related unaudited statements of income, cash flows and stockholders' equity for the nine months then ended (the "Financials"). The Financials are true and correct in all material respects and have been prepared in accordance with GAAP consistently applied throughout the periods indicated and consistent with each other except that the Financials may not contain all footnotes required by GAAP. The Financials present fairly the Company's financial condition, operating results and cash flows as of the dates and during the periods indicated therein. Company's unaudited balance sheet as of the Balance Sheet Date is referred to hereinafter as the "Current Balance Sheet." Prior to the Closing, Company discharged and satisfied in full all liabilities of the Company incurred prior to the Closing, including all accounts payable.

3.6 No Undisclosed Liabilities. Company has no liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether or not accrued, absolute, contingent, matured, unmatured, known or unknown, on- or off-balance sheet, except for those which have been reflected in the Current Balance Sheet. Except as set forth in Section 3.6 of the Disclosure Schedule, Company has no outstanding indebtedness as of the date hereof.

3.7 Purchased Assets.

(a) Company is the sole and exclusive owner of, and has good, exclusive and transferable title to, all of the Purchased Assets, and has the power to sell the Purchased Assets, in each case, free and clear of all liens. Except as set forth in Section 3.7 of the Disclosure Schedule, no Purchased Asset (i) is subject to any action or outstanding order that restricts in any manner the use, transfer or licensing thereof or that may affect the validity, use or enforceability of any of the Purchased Assets or any rights or remedies relating thereto or (ii) is owned or held, in whole or in any part, by any person other than Company.

(b) At the Closing, the Buyer will obtain good and valid title to the Purchased Assets, free and clear of all liens and the Buyer shall be able to use the Purchased Assets and exercise, and enjoy the benefits of, the Purchased Assets in substantially the same manner as Company prior to the Closing without infringing the rights of any third party.

(c) The Purchased Assets, together with the other rights, licenses, services and benefits to be provided to Buyer pursuant to this Agreement, constitute all of the properties, assets, rights and facilities owned, used, held for use, necessary for or intended for use, leased or licensed by Company in connection with the Business. The Purchased Assets, together with the other rights, licenses, services and benefits to be provided to Buyer and its Subsidiaries pursuant to this Agreement constitute all of the properties, assets, rights and facilities necessary and sufficient to enable Buyer, following the Closing, to continue to conduct the Business in the same manner as currently conducted by Company.

(d) There are no unpaid Taxes relating to the Purchased Assets that could reasonably be expected to result in any lien on or otherwise adversely affect the use or ownership by the Buyer or its affiliates of the Purchased Assets, or for which the Buyer or its affiliates could become liable as a result of the transactions contemplated by this Agreement.

(e) The Purchased Assets constitute substantially all of the properties of Company within the meaning of Section 368(a)(1)(C) of the Code.

### 3.8 Tax Matters.

(a) Definition of Taxes. For purposes of this Agreement, (i) “Tax” or, collectively, “Taxes”, means (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, escheat, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being or having been a member of an affiliated, consolidated, combined, unitary or similar group for any period (including, without limitation, any liability under Treas. Reg. Section 1.1502-6 or any comparable provision of foreign, state or local law); and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for taxes as a successor or transferee or otherwise by operation of law.

#### (b) Tax Returns and Audits.

(i) Company has timely filed all reports, forms, estimates, information statements and returns (including any attachments, schedules, addenda and amendments) with respect to any Taxes (“Tax Returns”) that it was required to file. All such Tax Returns were correct and complete in all material respects and have been completed in accordance with applicable law. All Taxes owed by Company (whether or not shown on any Tax Return) were paid in full when due.

(ii) Company has withheld with respect to its employees all federal and state income Taxes, Taxes pursuant to the Federal Insurance Contribution Act, Taxes pursuant to the Federal Unemployment Tax Act, and other Taxes required to be withheld.

(iii) There is no dispute, claim or proposed adjustment concerning any Tax liability of Company either (A) claimed or raised by any authority in writing or (B) based upon personal contact with any agent of such authority. Company is not a party to nor has it been notified that it is the subject of any pending, proposed or threatened action, investigation, proceeding, audit, claim or assessment by or before the Internal Revenue Service or any other governmental authority and there is no claim for assessment, deficiency or collection of Taxes, or proposed assessment, deficiency or collection from the

Internal Revenue Service or any other governmental authority which has not been satisfied, nor does Company have any reason to believe that any such notice will be received in the future.

(iv) There are (and as of immediately following the there will be) no Liens on the Purchased Assets relating or attributable to Taxes. Company has no knowledge of any basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Lien on the assets of Company.

(v) Company is not a party to any tax allocation or sharing agreement nor does Company owe any amount under any such agreement.

### 3.9 Title of Properties; Absence of Liens and Encumbrances; Condition of Equipment.

(a) Company owns no real property, nor has it ever owned any real property. Except as set forth in Schedule 3.9(a) of the Disclosure Schedules, Company has not leased any real property. All current leases of Company are in full force and effect, are valid and effective in accordance with their respective terms, and there is not with respect to Company, any other party to such leases, under any of such leases, any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default). Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, used or held for use in the Business, free and clear of any Liens, except as reflected in Company Financials and except for liens for taxes not yet due and payable.

### 3.10 Intellectual Property.

(a) Each item of Transferred Intellectual Property Rights and Transferred Technology is free and clear of any and all Liens. Company owns exclusively, and has good title to all works of authorship and all associated copyrights that are used or embodied in, the Transferred Technology, and no other Person has any other rights thereto. All Purchased Assets will be fully transferable, alienable or licensable by Buyer without restriction and without payment of any kind to any third party.

(b) To the extent that any Transferred Intellectual Property Rights or item of Transferred Technology was originally owned or created by or for any third party, including any predecessor of Company: (i) Company has a written agreement with such third party or parties with respect thereto, pursuant to which Company has obtained complete, unencumbered and unrestricted ownership and is the exclusive owner of, all such Technology and Intellectual Property Rights by valid assignment or otherwise; (ii) the transfers from Company to Buyer hereunder do not violate such third party agreements; (iii) such third parties have not retained and do not have any rights or licenses with respect to the Transferred Intellectual Property Rights or Transferred Technology; and (iv) no basis exists for such third party to challenge or object to this Agreement.

(c) The Transferred Intellectual Property Rights constitute all Intellectual Property Rights owned or transferable by Company, including all Intellectual Property Rights used in, necessary for, related to, associated with, or otherwise would be infringed by, the design, development, manufacture, use, distribution or sale of any Product.

(d) There are no material contracts, licenses or agreements to which Company is a Party (i) with respect to any Transferred Technology or the Transferred Intellectual Property Rights or (ii) with respect to any Technology or Intellectual Property Rights of any third party.



(e) Neither (x) the operation of the Business, including the making, using, selling, licensing and distribution of the Product, by either Company or, following the Closing, by Buyer, nor (y) the Purchased Assets (including the Transferred Technology), did, do, or will: (i) infringe or misappropriate the Intellectual Property Rights of any Person; (ii) violate the rights of any Person (including rights to privacy or publicity) or (iii) constitute unfair competition or trade practices under the laws of any jurisdiction. Company has not received notice from any Person claiming that the Business or the Purchased Assets infringe or misappropriate the Intellectual Property Rights of any Person or constitute unfair competition or trade practices under the laws of any jurisdiction (nor does Company have knowledge of any basis therefor).

(f) There are no Contracts between Company and any other Person with respect to the Purchased Assets, including the Transferred Intellectual Property Rights, under which there is any dispute or to the knowledge of Company, any threatened dispute regarding the scope of such agreement or performance under such agreement.

(g) Company has and enforces a policy requiring each employee and consultant of Company to execute a proprietary rights and confidentiality agreement and all current and former employees and consultants of Company who have created or modified any of the Transferred Technology have executed such an agreement assigning all of such employees' and consultants' rights in and to the Transferred Technology and the Transferred Intellectual Property to Company.

(h) No Purchased Asset is subject to any proceeding or outstanding decree, order, judgment, agreement or stipulation that restricts in any manner the use, transfer or licensing thereof or may affect the validity, use or enforceability of such Purchased Asset.

(i) Neither this Agreement nor the transactions contemplated hereby, including the assignment to Buyer, by operation of law or otherwise, of any Contracts to which Company is a party, will result in: (i) Buyer granting to any third party any right to or with respect to any Technology or Intellectual Property Right owned by, or licensed to, Buyer; (ii) Buyer being bound by, or subject to, any non-compete or other restriction on the operation or scope of its businesses; (iii) Buyer being obligated to pay any royalties or other amounts to any third party in excess of those payable by Buyer or Company prior to the Closing; or (iv) the obligation of Company to provide any source code to any third party or the release of any source code of Company from any escrow.

### 3.11 Employee Benefit Plans.

(a) Neither Company nor its ERISA Affiliates maintains, sponsors, contributes to or can reasonably be expected to have any liability with respect to (i) any "defined benefit plan" as defined in Section 3(35) of ERISA or any other plan subject to the funding requirements of Section 412 of the Code or Section 302 of Title IV of ERISA; or (ii) any "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA.

(b) Except as disclosed in Section 3.11(b) of the Disclosure Schedules, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (either alone or upon the occurrence of any additional or subsequent events) (i) constitute an event under any plans, employee agreements, trusts or loans that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee; or (ii) result in any payment or benefit which will or may be made by Company with respect to any Employee will be characterized as a "parachute payment," within the meaning of Section 280G(b)(2) of the Code.

3.12 Governmental Authorization. There are no material consents, licenses, permits, grants or other authorizations issued to Company by a Governmental Entity (i) pursuant to which Company currently operates or holds any interest in any of its properties or (ii) which is used in, necessary for or held for use in the operation of the Business.

3.13 Litigation. There is no action, suit, claim or proceeding of any nature pending or threatened against Company or its respective properties or assets or any of Company's officers or directors (with respect to the operations of Company), nor, to the knowledge of Company, is there any basis therefor. There is no investigation pending or threatened against Company or its respective properties or assets or any of Company's officers or directors (nor, to the best knowledge of Company, is there any basis therefor) by or before any Governmental Entity. No Governmental Entity has at any time challenged or questioned the legal right of Company to manufacture, offer or sell any of its products in the present manner or style thereof.

3.14 Brokers' and Finders' Fees; Third Party Expenses. Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby. Schedule 3.14 of the Disclosure Schedules sets forth a reasonable estimate of all Third Party Expenses (as defined in Section 5.2) expected to be incurred by Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby.

3.15 Insurance. Company has in full force and effect a general liability insurance policy in coverage amounts customary for similar businesses (subject to customary deductibles). There is no claim by Company pending under such policy or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies. All premiums due and payable under all such policies and bonds have been paid and Company is otherwise in material compliance with the terms of such policies (or other policies and bonds providing substantially similar insurance coverage). Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

3.16 Compliance with Laws. Company has complied with, is not in violation of, and has not received any notices of suspected, potential or actual violation with respect to, any foreign, federal, state or local statute, law or regulation. Company is not subject to any outstanding order, writ, injunction or decree of any Governmental Entity.

3.17 Complete Copies of Materials. Company has delivered or made available true and complete copies of each document that has been requested by Buyer or its counsel.

3.18 Representations Complete. None of the representations or warranties made by Company (as modified by Disclosure Schedules), nor any statement made in any Disclosure Schedule or certificate furnished by Company pursuant to this Agreement, or furnished in or in connection with documents mailed or delivered to the stockholders of Company in connection with soliciting such stockholders' consent to this Agreement and the Acquisition, contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact, necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer hereby represents and warrants to Company on the date hereof as follows:

4.1 Organization, Standing and Power. The Buyer Sub is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation.

4.2 Authority. Buyer has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligations of Buyer, enforceable in accordance with its terms, except as such enforceability may be limited by principles of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. The execution and delivery of this Agreement by Buyer does not, and, as of the Closing, the consummation of the transactions contemplated hereby will not Conflict with (i) any provision of the Certificate of Incorporation or Bylaws of Buyer or (ii) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise license, judgment, order decree, statute, law, ordinance, rule or regulation application to Buyer or its properties or assets. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any third party (so as not to trigger any Conflict), is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

4.3 Valid Issuance of Consideration. The shares of Buyer Common Stock to be issued as the Consideration, when issued in accordance with the terms and provisions of this Agreement, will be duly authorized, validly issued, fully paid and non-assessable and will not be subject to any preemptive rights created by statute, the current Certificate of Incorporation or the Bylaws of Buyer or any agreement to which Buyer is bound and will be issued in compliance with applicable federal and state securities laws.

4.4 Broker Fees. Buyer has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

## ARTICLE V

### COVENANTS AND ADDITIONAL AGREEMENTS

5.1 Confidentiality. Except as set forth on Schedule 5.1, each of the parties hereto hereby agree that the terms and conditions and existence of this Agreement and the transactions contemplated hereby (including any claim or dispute arising out of or related to this Agreement or the interpretation, making, performance, breach or termination thereof) shall be governed by the terms of that certain Confidentiality Agreement by and between Buyer and Company, dated as of August 12, 2013. In addition, after the Closing any confidential information of Company constituting or included with the Purchased Assets shall be deemed the confidential information of Buyer and any Buyer obligations set forth in the confidentiality Agreement shall no longer apply to Buyer with respect to such confidential information.

5.2 Expenses. All fees and expenses incurred in connection with the Acquisition including, without limitation, all accounting, legal, financial advisory, consulting and all other fees and expenses of third parties (“Third Party Expenses”) incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses; provided, however, that the Company shall pay the first \$30,000 of the documented fees and expenses of one counsel for Buyer (the “Legal Fees”); provided, further, that the Purchased Cash shall be reduced by the amount of the Legal Fees paid by Company to such counsel.

5.3 Distribution. In connection with the distribution by Company of shares of Buyer’s Common Stock following the Closing (the “Distribution”) to some or all of Company’s stockholders (each such stockholder, a “Distributee”), and as a condition precedent to any such Distribution, following the Closing, Company shall take all actions necessary in the Buyer’s discretion such that the issuance of the Consideration to Company in the Acquisition shall continue to constitute a private placement exempt from the registration requirements of the Securities Act, including, but not limited to, (i) limiting the Distribution to Distributees who are accredited investors (as such term is defined in Regulation D promulgated under the Securities Act of 1933, as amended) and (ii) obtaining a signed copy of the Joinder and Distribution Agreement, attached hereto as Exhibit B, from each Distributee. Exhibit C attached hereto sets forth the (A) name, (B) allocation of shares of Buyer’s Common Stock to be received in the Distribution by each of the Company’s stockholders and (C) percentage of total Consideration each of the Company’s stockholders shall receive in the Distribution. The Distribution shall be made to the stockholders of the Company prior to the dissolution of the Company.

5.4 Public Disclosure. Unless otherwise required by law, no disclosure (whether or not in response to an inquiry) of the subject matter of this Agreement shall be made by any party hereto unless approved by Buyer and Company prior to release, provided, that, such approval shall not be unreasonably withheld.

5.5 Tax Matters. Except as set forth in this Section 5.5, Company shall be responsible for the preparation and timely filing of all Tax Returns including or relating to Company’s use or ownership of the Purchased Assets. Such Tax Returns shall be true, complete and correct and prepared in accordance with applicable law and consistent with past practices. Company will be responsible for and will pay when due all Taxes reflected on such Tax Returns. In the case of any real or personal property Taxes or similar ad valorem Taxes relating or attributable to the Purchased Assets that are reported on a Tax Return covering a period commencing on or before the Closing Date and ending thereafter (“Straddle Period Taxes”), any such Straddle Period Taxes shall be prorated between Buyer and Company on a per diem basis. The party required by applicable law to pay any such Straddle Period Taxes (the “Paying Party”) shall prepare and timely file the Tax Returns with respect thereto in the time and manner required by law and shall timely pay all Taxes reflected on such Tax Returns. To the extent such payment exceeds the obligation of the Paying Party hereunder, the Paying Party shall be entitled to be reimbursed by the other party (the “Non-Paying Party”) for the Non-Paying Party’s share of such Straddle Period Taxes within ten (10) days of receipt of reasonably satisfactory evidence of the amount of such Straddle Period Taxes. To the extent either party receives a refund of Taxes previously paid, such refund will be equitably apportioned between the parties in a manner consistent with the provisions of this Section 5.5. To the extent relevant to the Purchased Assets and the Assumed Liabilities, Company on one side and Buyer on the other shall (i) provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any audit or other examination by any taxing authority or in connection with judicial or administrative proceedings relating to any liability for taxes and (ii) retain and provide the other party with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any audit or examination, or other tax proceeding. Company shall retain all relevant documents, including prior

years' Tax Returns, supporting work schedules and other records or information that may be relevant to such returns and shall not destroy or otherwise dispose of any such records without the prior written consent of Buyer.

5.6 Employees. Prior to the Closing, Company shall have terminated each Contract, and the employment relationship, with each Employee, in each case in form and substance reasonably satisfactory to Buyer and its counsel. Buyer will offer continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended to M&A qualified beneficiaries (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) with respect to the transactions contemplated by this Agreement.

5.7 Best Efforts. Subject to the terms and conditions provided in this Agreement, (a) each of the parties hereto shall use its commercial best efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement, and (b) Company shall use its best efforts to effect an orderly transition of the Purchased Assets from Company to Buyer, and such transition shall include, without limitation, the delivery of any vendor information related to Company, the Business and the Purchased Assets, the transfer of any passwords or other login credentials related to the Company, the Business and the Purchased Assets, and introductions to Company's stockholders and investors.

5.8 Winding Up. Subject to proper approval being obtained, promptly after the Closing, Company shall file a certificate of dissolution with the Secretary of State of the State of Delaware and shall, from and after the Closing, cease to carry on business except to the extent necessary for the winding up of Company as a Delaware corporation. Company shall complete its winding up and dissolution within four months of the Closing Date.

5.9 Notification of Certain Matters. Company shall give prompt notice to Buyer of any failure of Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.9 shall not limit or otherwise affect any remedies available to the party receiving such notice.

5.10 Tax Counsel. Each party to this Agreement has had an opportunity to review with its own tax advisors the tax consequences to such party of the transactions contemplated by this Agreement. Each party understands that it must rely solely on its advisors. Each party understands that it shall be responsible for its own tax liability that may arise as a result of the transactions contemplated by this Agreement.

## ARTICLE VI

### CONDITIONS TO THE ACQUISITION

6.1 Conditions to Obligations of Each Party to Effect the Acquisition. The respective obligations of each party to this Agreement to effect the Acquisition shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect, nor shall any proceeding

brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Acquisition, which makes the consummation of the Acquisition illegal.

6.2 Additional Conditions to Obligations of Company. The obligations of Company to consummate and effect this Agreement, and the Acquisition contemplated hereby, shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Company:

(a) Representations, Warranties and Covenants. The representations and warranties of Buyer in this Agreement shall be true and correct on and as of the Closing as though such representations and warranties were made on and as of such time and Buyer shall have performed and complied with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it as of the Closing.

(b) Claims. There shall not have occurred any claims (whether or not asserted in litigation) which may materially and adversely affect the consummation of the transactions contemplated hereby or the business assets (including intangible assets), financial condition or results of operations of Buyer.

(c) No Injunctions or Restraints on Conduct of Business. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or provision challenging Buyer's or Buyer's proposed acquisition of Company, or limiting or restricting Buyer's or Buyer's conduct or operation of the Business (or its own business) following the Acquisition shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending.

6.3 Additional Conditions to the Obligations of Buyer. The obligations of Buyer to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Buyer:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of Company in this Agreement (other than the representations and warranties of Company as of a specified date, which shall be true and correct in all material respects as of such date) shall have been true and correct in all material respects on the date they were made and shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such date, and (ii) Company shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by it as of or prior to the Closing Date.

(b) No Material Adverse Changes. There shall not have occurred any material adverse change in Company, the Business, the Purchased Assets, results of operations, liabilities (contingent or accrued), prospects or financial condition of Company.

(c) Certificate of Company. The Buyer shall have received a certificate from Company, validly executed by the Chief Executive Officer of Company for and on Company's behalf, to the effect that, as of the Closing, each of the conditions set forth in Section 6.3(a)(i), Section 6.3(a)(ii) and Section 6.3(b) have been satisfied.

(d) Certificate of Secretary. A certificate of the Secretary of Company dated as of the Closing Date certifying as to Company's Certificate of Incorporation and Bylaws, and certifying that the minutes of the Board of Directors of Company and the written consent of Company's stockholders relating to and approving this Agreement and the transactions contemplated hereby are true, correct and complete and that such minutes and consent have not been rescinded, superseded or otherwise modified since the date thereof.

(e) Claims. There shall not have occurred any claims (whether or not asserted in litigation) which may materially and adversely affect the consummation of the transactions contemplated hereby or the business assets (including intangible assets), financial condition or results of operations of Company.

(f) Conduct. Since September 27, 2013, Company shall have operated the Business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted.

(g) Liabilities. Company shall have discharged and satisfied in full all liabilities of the Company incurred prior to the Closing, including all accounts payable.

(h) Unanimous Board Approval. This Agreement and the Acquisition shall have been unanimously approved by the Board of Directors of Company, which unanimous approval shall not have been altered, modified, changed or revoked.

(i) Stockholder Approval. This Agreement and the Acquisition shall have been approved and adopted by the requisite vote of the stockholders of Company.

(j) No Injunctions or Restraints on Conduct of Business. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or provision challenging Buyer's or Buyer's proposed acquisition of Company, or limiting or restricting Buyer's or Buyer's conduct or operation of the Business (or its own business) following the Acquisition shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending.

(k) Litigation. There shall be no action, suit, claim or proceeding of any nature pending, or threatened, against Company, Company's properties or Company's officers or directors, arising out of, or in any way connected with, the Acquisition or the other transactions contemplated by the terms of this Agreement.

(l) Delivery of Collateral Agreements. Company shall have delivered to Buyer executed copies of each of the Collateral Agreements, in each case in form and substance reasonably satisfactory to Buyer and its counsel.

(m) Employees. As of the Closing, Company shall have terminated each Contract, and the employment relationship, with each Employee, in each case in form and substance reasonably satisfactory to Buyer and its counsel.

(n) Deliverables. Company shall have delivered (or caused to be delivered) the closing deliveries set forth in Section 2.6.

## ARTICLE VII

### AMENDMENT AND WAIVER

7.1 Amendment. This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of both Buyer and Company.

7.2 Extension; Waiver. At any time prior to the Closing, Buyer, on the one hand, and Company, on the other hand, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Buyer, to:

Magnify Networks, Inc.  
135 West 29th St, Ste. 702  
New York, NY 10001  
*Attention:* Chief Executive Officer

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.  
1301 Avenue of the Americas, 40<sup>th</sup> Floor  
New York, NY 10019-6022  
*Attention:* Adam Dinow

(b) if to Company, to:

Waywire, Inc.  
29221 Heathercliff Road , Unit 11  
Malibu, CA 90265  
*Attention:* Sarah Ross

with a copy to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP  
1200 Seaport Boulevard  
Redwood City, CA 94063  
*Attention:* Daniel E. O'Connor



William M. Freiberg

8.2 Interpretation. The words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

8.4 Entire Agreement; Assignment. This Agreement, the schedules and Exhibits hereto, and the documents and instruments and other agreements among the parties hereto referenced herein: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) are not intended to confer upon any other person any rights or remedies hereunder; and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided, except that Buyer may assign their respective rights and delegate their respective obligations hereunder to their respective affiliates.

8.5 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

8.6 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

8.7 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

8.8 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, Buyer and Company have caused this Asset Purchase Agreement to be signed by their duly authorized respective officers, all as of the date first written above.

Buyer:

Magnify Networks, Inc.  
a Delaware Corporation

By: \_\_\_\_\_

Name: Steven Rosenbaum

Title: President

Company:

Waywire, Inc.  
a Delaware Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*(Signature page to Asset Purchase Agreement)*

IN WITNESS WHEREOF, Buyer and Company have caused this Asset Purchase Agreement to be signed by their duly authorized respective officers, all as of the date first written above.

Buyer:

Magnify Networks, Inc.  
a Delaware Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company:

Waywire, Inc.  
a Delaware Corporation

By: Sarah Ross

Name: Sarah Ross

Title: Interim CEO

*[Signature page to Asset Purchase Agreement]*

TRADEMARK

REEL: 005179 FRAME: 0587

**Exhibit A**  
**General Assignment**

**Exhibit B**

**Joinder and Distribution Agreement**

**Exhibit C**

The following is a list of the Company's stockholders and noteholders that are eligible to receive, upon execution of the Joinder and Distribution Agreement, the Consideration in the Distribution pursuant to Section 5.3 of this Agreement.

	<b>ALLOCATION OF SHARES IN THE ISSUANCE</b>	<b>% OF TOTAL</b>
<b><u>Stockholders</u></b>		
Cory Booker/Community Foundation of New Jersey	25,882	3.33%
Nathan Richardson	25,882	3.33%
Sarah Ross	25,882	3.33%
First Round Capital	85,303	10.99%
Innovation Endeavors, LLC	14,683	1.89%
Jerry Elliott	7,341	0.95%
G&H Partners	7,341	0.95%
WS Investments III, LLC	14,681	1.89%
Anne Devereux	3,670	0.47%
Kevin Richardson	3,668	0.47%
Brian Kelly	7,334	0.94%
Gayle King	14,657	1.89%
The David and Nancy Roy Family Trust	3,664	0.47%
Oprah Winfrey	14,653	1.89%
Lewis Katz 2003 Descendants Trust	7,322	0.94%
JJ Direct, LLC	3,661	0.47%
softedge, inc. Defined Benefit Pension Plan, Michael C and Teresa C Cunniff, TTEES	3,661	0.47%
John Ham	1,550	0.20%
Keith Lee	1,550	0.20%
Jeff Weiner	6,201	0.80%
AF Square LLC		0.24%

	1,860	
Shashlik Capital LLC	6,201	0.80%
Mark D. Kingdon and Alon Rehany, Trustees, or their successors in trust under the Kingdon Rehany Family Living Trust, dated May 10, 2011, and any amendments thereto.	3,100	0.40%
Greg Schwartz	3,100	0.40%
Lawrence Leibowitz	3,100	0.40%
L. Thomas Sperry	5,333	0.69%
Christian J. Lawless	6,201	0.80%
Christopher Ruddy	3,100	0.40%
<b><u>Noteholders</u></b>		
First Round Capital IV, L.P.	91,337	11.76%
Harman Investments, L.P.	91,337	11.76%
Karma Ventures LLC	90,819	11.70%
Thatcher Bell and Victoria Weil	5,429	0.70%
Joy Marcus and David Rosenberg	7,227	0.93%
Lucas Nelson	5,420	0.70%
Box Group LLC	18,067	2.33%
James Veraldi	14,410	1.86%
SNP Ventures, LP	70,929	9.14%
Jay Zises	35,460	4.57%
Kidco Management L-2, LP	35,436	4.56%
<b>TOTAL</b>	776,452	100.00%