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Tab settings

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

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

1. Name of conveying party(ies):

MOBIUS TECHNOLOGY VENTURES VI L.P.

4-15-03

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

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other RELEASE OF SECURITY INTEREST
- Merger
- Change of Name

Execution Date: 04/03/2003

2. Name and address of receiving party(ies)

Name: ALIGNMENT SOFTWARE INC.

Internal Address: SUITE 200

Street Address: 100 SUPERIOR PLAZA WAY

City: SUPERIOR State: CO Zip: 80027

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State DELAWARE
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) 2,525,343

Additional number(s) attached Yes No

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

Name: PAUL KOENIG

Internal Address: SUITE 2A

Street Address: KENDALL, DICKINSON & KOENIG
1821 BLAKE STREET

City: DENVER State: CO Zip: 80202

6. Total number of applications and registrations involved:

6

7. Total fee (37 CFR 3.41).....\$ 165

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

W. Paul Koenig, Esq.
Name of Person Signing

W Paul Koenig
Signature

4/8/03
Date

Total number of pages including cover sheet, attachments, and document: 3

04/17/003 E200P1 0000024 2525343

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

01 FC:0021
02 FC:0022

40.00 OP
125.00 OP

TRADEMARK
REEL: 002842 FRAME: 0716

BUSINESS COMBINATION AND FUNDING AGREEMENT

Business Combination and Funding Agreement, dated as of April 4, 2003 (the "Agreement") by and among (i) A/M Combination, Inc., a Delaware corporation (the "Company"), (ii) Matrix NetSystems, Inc., a Delaware corporation ("Matrix"), (iii) Alignment Software Inc., a Delaware corporation ("Alignment"), (iv) Mobius Technology Ventures VI, L.P., SOFTBANK U.S. Ventures VI, L.P., Mobius Technology Ventures Advisors Fund VI, L.P., and Mobius Technology Ventures Side Fund VI, L.P. (collectively, "Mobius"), and (v) Meritage Private Equity Fund, L.P., Meritage Private Equity Parallel Fund, L.P. and Meritage Entrepreneurs Fund, L.P. (collectively, "Meritage" and, together with Mobius, the "Investors").

The parties desire to effect a combination of the operations of Matrix and Alignment in the form of a sale by Matrix and Alignment of substantially all of their respective assets to the Company and the assumption by the Company of specified liabilities of Matrix and Alignment, and the Investors wish to provide additional funding to the Company, all upon the terms and subject to the conditions of this Agreement. Capitalized terms used and not otherwise defined herein have the meanings set forth in Section 7.3 below.

THEREFORE, in consideration of the mutual undertakings set forth herein, the parties agree as follows:

Article I—Business Combination

Section 1.1 Company Actions Prior to the Closing. Prior to the Closing (as defined below in Section 3.1), the Company shall (a) authorize the issuance pursuant to this Agreement of up to [REDACTED] shares of its Series B Preferred Stock, \$.001 par value per share (the "Series B Preferred Stock"), [REDACTED] shares of its Series A Preferred Stock, \$.001 par value per share (the "Series A Preferred Stock"), and [REDACTED] shares of its Common Stock, \$.001 par value per share (the "Common Stock"), each with the relative rights and preferences set forth in the Company's Certificate of Incorporation attached hereto as Exhibit A (the "Certificate"), (b) duly adopt the bylaws set forth in Exhibit B hereto (the "Bylaws"), and (c) duly adopt an Employee Option Plan in the form attached hereto as Exhibit C (the "Option Plan"), and (d) take the actions contemplated by Section 1.4 below with respect to Matrix and Alignment employees.

Section 1.2 Transfer of Matrix Assets. At the Closing, Matrix shall transfer, sell, assign, contribute and deliver to the Company, and the Company shall purchase and take delivery from Matrix, all Matrix's right, title and interest in and to all of its assets, properties and rights of whatever nature, other than cash, Cash-Equivalents and the stock of any subsidiary of Matrix (collectively, the "Matrix Assets"), in exchange for (i) the issuance by the Company to Matrix of [REDACTED] shares of its Series A Preferred Stock and [REDACTED] shares of its Common Stock and (ii) the assumption by the Company of the liabilities and obligations of Matrix set forth on Exhibit D hereto (collectively, the "Matrix Assumed Liabilities") (clauses (i) and (ii) collectively, the "Matrix Consideration"). Other than the Matrix Assumed Liabilities,

the Company shall not assume or otherwise be responsible for any liability or obligation of Matrix, and Matrix agrees to discharge all such non-assumed liabilities and obligations, including without limitation the liabilities and obligations set forth on Exhibit E hereto (collectively, the "Matrix Retained Liabilities").

Section 1.3 Transfer of Alignment Assets. At the Closing, Alignment shall transfer, sell, assign, contribute, and deliver to the Company, and the Company shall purchase and take delivery from Alignment, all Alignment's right, title and interest in and to all of its assets, properties and rights of whatever nature, other than cash and Cash Equivalents (collectively, the "Alignment Assets"), in exchange for (i) the issuance by the Company to Alignment of [REDACTED] shares of its Series A Preferred Stock and [REDACTED] shares of its Common Stock and (ii) the assumption by the Company of the liabilities and obligations of Alignment set forth on Exhibit F hereto (collectively, the "Alignment Assumed Liabilities") (clauses (i) and (ii) collectively, the "Alignment Consideration"). Other than the Alignment Assumed Liabilities, the Company shall not assume or otherwise be responsible for any liability or obligation of Alignment, and Alignment agrees to discharge all such non-assumed liabilities and obligations, including, without limitation, the obligations and liabilities set forth on Exhibit G hereto (the "Alignment Retained Liabilities").

Section 1.4 Employee Matters. At a mutually agreeable time prior to Closing, the Company will offer consulting contracts or employment, effective as of Closing, to those persons set forth on Exhibit H hereto on the terms and conditions set forth on Exhibit H hereto. With respect to each employee that accepts employment with the Company, (i) each unexercised option to acquire shares of common stock of Matrix or Alignment held by such employee shall be cancelled in exchange for an option to acquire shares of the Company's Common Stock pursuant to the Option Plan, which option shall be evidenced by an option agreement in substantially the form of Exhibit I attached hereto, and (y) the parties agree to use the alternative procedure set forth in Section 5 of IRS Revenue Procedure 96-60 in order to treat such employee as having one employer for payroll tax and compliance purposes during the entire calendar year 2003.

Section 1.5 Liquidations Following the Closing. As soon as practicable following the Closing, each of Matrix and Alignment will discharge its remaining liabilities and commence liquidation proceedings pursuant to the provisions of Delaware law. In furtherance thereof, Matrix will adopt the plan of liquidation, dissolution and distribution attached hereto as Exhibit J (the "Matrix Plan of Liquidation") and Alignment will adopt the plan of liquidation and dissolution attached hereto as Exhibit K (the "Alignment Plan of Liquidation"). Pursuant to the liquidation of Matrix and in accordance with the Matrix Plan of Liquidation, the holders of Matrix's Series B preferred stock will receive the shares of the Company's Series A Preferred Stock issued pursuant to Section 1.2 and the holders of Matrix's Series A preferred stock and common stock will receive the shares of the Company's Common Stock issued pursuant to Section 1.2. Pursuant to the liquidation of Alignment and in accordance with the Alignment Plan of Liquidation, the holders of Alignment's Series A preferred stock and the holders of that portion of those certain Promissory Notes, dated November 1, 2002 and January 31, 2003, with Alignment as maker and Mobius as holder, in the aggregate principal amount of [REDACTED] (the "Mobius Bridge Loans") that are not assumed by the Company will receive the shares of the

Company's Series A Preferred Stock issued pursuant to Section 1.3 and the holders of Alignment's common stock will receive the shares of the Company's Common Stock issued pursuant to Section 1.3.

Section 1.6 Tax Matters.

(a) Each of the transactions contemplated by Sections 1.2 and 1.3 is intended to qualify as a tax-free reorganization pursuant to Section 368(a)(1)(C) of the Internal Revenue Code of 1986, as amended (the "Code"), and the parties covenant and agree to treat each such transaction as a tax-free reorganization pursuant to Section 368(a)(1)(C) of the Code for all tax purposes.

(b) The Company shall pay any sales, use, transfer, stamp, documentary or other Taxes and any recording and filing fees, incurred in connection with the transfer of the Matrix Assets, Matrix Assumed Liabilities, Alignment Assets and Alignment Assumed Liabilities pursuant to this Agreement, and shall timely file all tax returns with respect to such taxes and fees. The Company shall also pay for the fees of independent public accountants retained by the Company following Closing to prepare consolidated audited financial statements for the Company.

(c) The parties agree to furnish or cause to be furnished to each other, upon reasonable request, as promptly as practicable, such information and assistance as is reasonably necessary for the preparation of any Return, claim for refund or audit, and the prosecution of defense of any claim, suit or proceeding relating to any Tax. Any information provided or obtained under this paragraph shall be kept confidential, except as may otherwise be necessary in connection with the filing of a Return, refund claims, tax audits, tax claims and tax litigation or as required by law.

Section 1.7 Assumption of Liabilities; Release of Security Interests. At Closing, (i) each Investor shall unconditionally release any and all security interests that such Investor may have in or to any Matrix Assets and/or Alignment Assets, and (ii) Meritage shall unconditionally release any and all amounts and liabilities owing from Matrix to Meritage in excess of the Meritage Conversion Debt (as defined below) shall be cancelled.

Article II—Funding

Section 2.1 Purchase of Series B Preferred Stock by Mobius. Immediately following the Closing and the consummation of the transactions contemplated by Section 1.2 and Section 1.3, Mobius shall purchase, and the Company shall issue and sell, a total of [REDACTED] shares of Series B Preferred Stock at a price of \$1.00 per share in cash. In connection with such purchase, the Company and Mobius agree to convert that portion of the Mobius Bridge Loans that are assumed by the Company (not to exceed \$[REDACTED]) (the "Mobius Conversion Debt") into additional shares of Series B Preferred Stock on a dollar-for-dollar basis (the "Additional Mobius Shares"). Such Series B Preferred Stock shall have the rights, preferences, privileges and restrictions set forth in the Certificate.

Section 2.2 Purchase of Series B Preferred Stock by Meritage. Immediately following the Closing and the consummation of the transactions contemplated by Section 1.2 and Section 1.3, Meritage shall purchase, and the Company shall issue and sell, a total of [REDACTED] shares of Series B Preferred Stock at a purchase price of \$1.00 per share. In connection with such purchase, the Company and Meritage agree to convert that portion of those certain Promissory Notes, dated January 7, 2003, and March 31, 2003, with Matrix as maker and Meritage Private Equity Fund, L.P. as holder, with the aggregate principal amount of \$[REDACTED] (the "Meritage Bridge Loan") that is assumed by the Company (not to exceed \$[REDACTED]) (the "Meritage Conversion Debt") into additional shares of Series B Preferred Stock on a dollar-for-dollar basis (the "Additional Meritage Shares"). Such Series B Preferred Stock shall have the rights, preferences, privileges and restrictions set forth in the Certificate.

Article III—Closing

Section 3.1 Closing. The closing of the transactions contemplated by Articles I and II (the "Closing") shall be held on the business day following the satisfaction or waiver of the conditions set forth in Article VI (the "Closing Date") at the offices of Holme Roberts & Owen LLP, 1700 Lincoln Street, Suite 4100, Denver, CO 80203, or at such other time and place as the parties may agree.

Section 3.2 Deliveries at Closing. At the Closing:

(a) Matrix shall:

- i. execute and deliver to the Company the bill of sale attached hereto as Exhibit L (the "Matrix Bill of Sale"), together with such other assignments, deeds and other instruments as shall be appropriate to transfer the Matrix Assets to the Company;
- ii. execute and deliver to the Company the assignment and assumption agreement attached hereto as Exhibit M (the "Matrix Assignment and Assumption Agreement");
- iii. deliver to the Company possession of all the Matrix Assets;
- iv. execute and deliver to the Company the Stockholders Agreement (as defined below); and
- v. execute and deliver such other instruments or documents, and take such other actions, as the Company, any of the Investors or Alignment reasonably may request to effect the Closing.

(b) Alignment shall:

- i. execute and deliver to the Company the bill of sale attached hereto as Exhibit N (the “Alignment Bill of Sale”), together with such other assignments, deeds and other instruments as shall be appropriate to transfer the Alignment Assets to the Company;
 - ii. execute and deliver to the Company the assignment and assumption agreement attached hereto as Exhibit O (the “Alignment Assignment and Assumption Agreement”);
 - iii. deliver to the Company possession of all the Alignment Assets;
 - iv. execute and deliver to the Company the Stockholders Agreement; and
 - v. execute and deliver such other instruments or documents, and take such other actions, as the Company, any of the Investors or Matrix reasonably may request to effect the Closing.
- (c) the Company shall:
- i. deliver to Matrix duly issued and fully paid stock certificates representing [REDACTED] million shares of Common Stock and [REDACTED] shares of Series A Preferred Stock;
 - ii. execute and deliver to Matrix the Matrix Assignment and Assumption Agreement;
 - iii. deliver to Alignment duly issued and fully paid stock certificates representing [REDACTED] million shares of Common Stock and [REDACTED] shares of Series A Preferred Stock;
 - iv. execute and deliver to Alignment the Alignment Assignment and Assumption Agreement;
 - v. deliver to Mobius duly issued and fully paid certificates representing [REDACTED] shares of Series B Preferred Stock;
 - vi. deliver to Meritage duly issued and fully paid certificates representing [REDACTED] shares of Series B Preferred Stock;
 - vii. deliver to Mobius duly issued and fully paid certificates representing the [REDACTED] Additional Mobius Shares;
 - viii. deliver to Meritage duly issued and fully paid certificate representing the [REDACTED] Additional Meritage Shares;

- ix. deliver to Alignment, Matrix, Mobius and Meritage the Company Legal Opinion (as defined in Section 6.3.4);
- x. execute and deliver the Stockholders and Investor Rights Agreement attached as Exhibit P (the “Stockholders Agreement”);
- xi. execute and deliver such other instruments or documents, and take such other actions, as any of the Investors, Matrix or Alignment reasonably may request to effect the Closing; and
- xii. within applicable time periods duly file a Form D (and all other applicable securities filings) with the Securities Exchange Commission and all applicable State securities commissions or similar authorities with respect to all shares of the Company’s stock issued at Closing.

(d) Mobius shall:

- i. pay to the Company [REDACTED] by wire transfer of immediately available funds to an account designated by the Company;
- ii. execute and deliver to the Company, Matrix and Alignment such documents necessary and sufficient to terminate any security interest that Mobius has in or to any of Alignment Assets;
- iii. execute and deliver to the Company the Stockholders Agreement;
- iv. execute and deliver to the Company, Matrix, Meritage and Alignment such documents as the Company, Matrix, Meritage and Alignment may reasonably request to cancel, and evidence the cancellation of, the Mobius Conversion Debt, evidence the agreement of Mobius to cancel any portion of the Mobius Bridge Loan not paid in full at the time of the final liquidation and dissolution of Alignment, and terminate any security interest that Mobius or any of its affiliates have in or to the Alignment Assets; and
- v. execute and deliver such other instruments or documents, and take such other actions, as the Company, Meritage, Matrix or Alignment reasonably may request to effect the Closing.

(e) Meritage shall:

- i. pay to the Company [REDACTED] by wire transfer of immediately available funds to an account designated by the Company;

- ii. execute and deliver to Matrix such documents necessary and sufficient to terminate any security interest that Meritage has in or to any the Matrix Assets;
- iii. execute and deliver to the Company the Stockholders Agreement;
- iv. execute and deliver to the Company, Alignment, Mobius and Matrix such documents as the Company, Alignment, Mobius and Matrix may reasonably request to cancel, and evidence the cancellation of, the Meritage Conversion Debt, including without limitation canceling the Meritage Bridge Loan, and terminate any security interest that Meritage or any of its affiliates have in or to the Matrix Assets; and
- v. execute and deliver such other instruments or documents, and take such other actions, as the Company, Mobius, Matrix or Alignment reasonably may request to effect the Closing.

Section 3.3 Further Assurances. At any time and from time to time following the Closing, each of the parties hereto agrees to execute and deliver such further instruments, and to take such further actions, as may be reasonably requested by any other party in order to give effect to the transactions contemplated by this Agreement. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not obligate Matrix or Alignment to transfer, sublease or assign any contract, license, lease, commitment or any other agreement if any such attempted transfer, sublease or assignment without the consent of any third party would constitute a breach thereof or would in any way materially and adversely affect the rights of the Company thereunder following the Closing. Each of Matrix and Alignment shall use all commercially reasonable efforts to obtain the consent of any third party or parties to such transfer, sublease or assignment in all cases in which such consent is required. If any such consent is not obtained, or if an attempted assignment would be ineffective or would materially and adversely affect the rights of the Company thereunder, Matrix or Alignment (as applicable) shall perform such agreement for the account of the Company to the extent permitted under the terms thereof or otherwise cooperate with the Company in any reasonable arrangement necessary or desirable to provide for the Company the benefits of any such agreement at all times following the Closing, including, without limitation, enforcement for the benefit of the Company of any and all rights against any other party thereto arising out of the breach, termination or cancellation of such agreement by such other party or otherwise.

Article IV—Representations and Warranties

Section 4.1 Representations and Warranties of the Company. Except as set forth in the Company Disclosure Schedule attached hereto as Exhibit Q the Company represents and warrants to each of Matrix, Alignment and the Investors as follows:

[REPRESENTATIONS REDACTED]

Section 4.2 Representations and Warranties of Matrix. Matrix hereby represents and warrants to the Company, Alignment and Mobius, except as set forth on the Matrix Disclosure Schedule attached hereto as Exhibit R (which disclosures shall also constitute representations and warranties of Matrix hereunder), as follows:

[REPRESENTATIONS REDACTED]

Section 4.3 Representations and Warranties of Alignment. Alignment hereby represents and warrants to the Company, Matrix and Meritage, except as set forth on the Alignment Disclosure Schedule attached hereto as Exhibit S (which disclosures shall also constitute representations and warranties of Alignment hereunder), as follows:

[REPRESENTATIONS REDACTED]

Section 4.4 Representations and Warranties of the Investors. Each of the Investors, severally and not jointly, hereby represents and warrants to the Company as follows:

[REPRESENTATIONS REDACTED]

Article V—Covenants

Section 5.1 Conduct of Business. Except as expressly contemplated by this Agreement or otherwise consented to in writing by the other parties hereto, during the period from the date of this Agreement to the Closing Date, each of Matrix and Alignment shall continue to conduct its business in the ordinary course (including the prompt payment of accounts payable and other operating expenses), and will not intentionally take any actions that would result in a breach of its representations and warranties contained herein. Without limiting the generality of the foregoing, and except as otherwise expressly provided in this Agreement, prior to the Closing Date, neither Matrix nor Alignment will directly or indirectly, without the prior written consent of the other party: (a) sell, pledge, dispose of or encumber its assets, except for sales of inventory in the ordinary course of business; (b) other than borrowings from the Investors for working capital purposes, incur any indebtedness for borrowed money, issue or sell any debt securities, or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other individual or entity, or make any loans or advances; (c) except as otherwise required by law, enter into, adopt or amend in any material respect, any material agreement or plan for the benefit of its employees; or (d) acquire (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or make any material investment either by purchase of stock or securities, contributions to capital, property transfer or purchase of property or assets, in any other individual or entity.

Section 5.2 Filings and Other Actions. Each of the parties shall use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws to consummate and make effective, as soon as reasonably practicable, the transactions contemplated hereby. Without limiting the generality of the foregoing, each of the parties shall use all commercially reasonable efforts to

obtain all licenses, permits, approvals, authorizations, waivers and consents of all third parties necessary for the consummation of the transactions contemplated hereby and use all commercially reasonable efforts to fulfill all conditions to this Agreement.

Section 5.3 Access to Information; Confidentiality. From the date hereof to the Closing Date, each of Matrix and Alignment shall, and shall cause its officers, directors, employees and agents to, afford the other parties and their directors, officers, employees, agents, representatives and advisors reasonable access at all reasonable times to its officers, employees, agents, properties, books, records and contracts, and shall furnish all financial, operating and other data and information as the other parties may reasonably request. All such information shall be held in strict confidence by the receiving party and shall be used only for purposes of evaluating the transactions described herein. The party receiving such information shall promptly upon termination of this Agreement and the written request of the furnishing party deliver to the furnishing party all documents or other matter furnished by the furnishing party to the receiving party pursuant or relating to this Agreement, together with all copies thereof in the possession of the receiving party. In the event of such request, all other documents or other matters in the possession of the receiving party furnished by the furnishing party to the receiving party pursuant or relating to this Agreement shall be destroyed, with any such destruction confirmed in writing to the furnishing party.

Section 5.4 Public Announcements. The parties shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by law.

Section 5.5 No Solicitation; Acquisition Proposals. Neither Matrix nor Alignment shall, directly or indirectly, through an officer, director, employee, representative, agent, financial advisor or otherwise, solicit, initiate or encourage inquiries or submission of proposals or offers from any person relating to any sale of all or any portion of its assets, business, properties (other than immaterial or insubstantial assets or inventory in the ordinary course of business), or any equity interest in it, or any business combination with it whether by merger, purchase of assets, tender offer or otherwise or participate in any negotiation regarding or furnishing to any other person any information with respect to, or otherwise cooperate in any way with, or assist in, facilitate or encourage, any effort or attempt by any other person to do or seek to do any of the foregoing, and such party will notify all other parties immediately if any inquiries or proposals are received by, any information is requested from, or any negotiations or discussions are sought to be initiated with such party, in each case in connection with any of the foregoing, *provided, however*, that Alignment shall be able to continue discussions with Keynote Systems, Inc. surrounding a potential non-exclusive nontransferable product license agreement regarding instrumentation technology.

Section 5.6 Notice of Breach. Each party shall promptly give written notice to each other party upon becoming aware of the occurrence or, to its knowledge, impending or threatened occurrence, of any event that could cause or constitute a breach of any of its representations, warranties or covenants hereunder such that the conditions to Closing contemplated by this Agreement would not be satisfied on the Closing Date.

Section 5.7 Offer to Matrix and Alignment Common Stockholders.

(a) The Company shall offer an aggregate of [REDACTED] shares of Series B Preferred Stock to Matrix stockholders (the "Matrix Maximum Shares") and an aggregate of [REDACTED] shares of Series B Preferred Stock to Alignment stockholders (the "Alignment Maximum Shares"), in each case pursuant to the terms of this Section 5.7.

(b) Within thirty (30) days following the Closing, the Company shall offer to each Matrix stockholder (other than Meritage) the opportunity, subject to compliance with federal and state securities laws, to purchase up to [REDACTED] shares of Series B Preferred Stock at \$1.00 per share and on substantially the same terms and conditions as the Investors, it being understood that any such offer shall be conditioned upon such Matrix stockholder being an Accredited Investor and that any such Matrix stockholder shall be subject to voting obligations set forth in Section 5.1 of the Stockholders Agreement (the "Matrix Rights Offering"). The minimum investment in the Matrix Rights offering shall be [REDACTED]. If the total number of subscriptions in the Matrix Rights Offering exceed the Matrix Maximum Shares, then the Matrix Maximum Shares shall be allocated pro rata among Matrix stockholders seeking to subscribe based on their relative percentage ownership of Matrix stock on the Closing Date.

(c) Within thirty (30) days following the Closing, the Company shall offer to each Alignment stockholder (other than Mobius) the opportunity, subject to compliance with federal and state securities laws, to purchase up to [REDACTED] shares of Series B Preferred Stock on substantially the same terms and conditions as the Investors, it being understood that any such Alignment stockholder shall be subject to voting obligations set forth in Section 5.1 of the Stockholders Agreement (the "Alignment Rights Offering"). The minimum investment in the Alignment Rights Offering shall be [REDACTED]. If the total number of subscriptions in the Alignment Rights Offering exceed the Alignment Maximum Shares, then the Alignment Maximum Shares shall be allocated pro rata among Alignment stockholders seeking to subscribe based on their relative percentage ownership of Alignment stock on the Closing Date.

(d) The Matrix Rights Offering shall extend for thirty (30) days or such other period as the parties may mutually agree upon in writing commencing on the date of the first offer to a Matrix stockholder as contemplated by Section 5.1(a) (the "Matrix Offering Period"). The Alignment Rights Offering shall extend for thirty (30) days or such other period as the parties may mutually agree upon in writing commencing on the date of the first offer to an Alignment stockholder as contemplated by Section 5.1(b) (the "Alignment Offering Period"). Within two (2) business days following the conclusion of the Matrix Offering Period, the Company shall issue all shares, up to the Matrix Maximum Shares, that have been duly subscribed for in the Matrix Rights Offering (such number of shares, the "Matrix Subscription Shares"). Within two (2) business days following the conclusion of the Alignment Offering Period, the Company shall issue all shares, up to the Alignment Maximum Shares, that have been duly subscribed for in the Alignment Rights Offering (such number of shares, the "Alignment Subscription Shares").

(e) Within two (2) business days following the end of the Alignment Offering Period the Company shall give written notice (the "Offering Notice") to each of Mobius and Meritage

specifying the number of shares of Series B Preferred Stock subscribed for and issued in each of the Matrix Rights Offering and the Alignment Rights Offering.

(f) If the Alignment Subscription Shares equal the Alignment Maximum Shares, then Mobius shall not be entitled to purchase any additional shares pursuant to this Section 5.1. If the Alignment Subscription Shares are fewer than the Alignment Maximum Shares, then Mobius shall purchase the number of shares of Series B Preferred Stock equal to the difference between the Alignment Maximum Shares and the Alignment Subscription Shares, such purchase to be at a price of \$1.00 per share and payment rendered by Mobius to the Company within five (5) business days following Mobius' receipt of the Offering Notice (the "Mandatory Mobius Take-Down").

(g) If the Matrix Subscription Shares equal the Matrix Maximum Shares, then Meritage shall not be entitled to purchase any additional shares pursuant to this Section 5.1. If the Matrix Subscription Shares are fewer than the Matrix Maximum Shares, then Meritage shall purchase the number of shares of Series B Preferred Stock equal to the difference between the Matrix Maximum Shares and the Matrix Subscription Shares, provided, however, that in no event shall Meritage be required or entitled, pursuant to this Section 5.1, to purchase more shares of Series B Preferred Stock than is issued in the Matrix Rights Offering and the Mandatory Mobius Take-Down, cumulatively. Such purchase by Meritage shall be at a price of \$1.00 per share and payment shall be rendered by Meritage to the Company within five (5) business days following Meritage's receipt of the Offering Notice.

(h) The parties shall cooperate with the preparation of any disclosure memorandum or similar documentation regarding the offerings contemplated by this Section 5.1 (including the timely filing of necessary Form Ds following such offerings). The issuance of shares in each of the Matrix Rights Offering and the Alignment Rights Offering shall be conditioned upon execution and delivery of such documentation that the Company may reasonably request (including, without limitation, execution and delivery of the Stockholders Agreement).

Section 5.8 Reservation of Shares. The Company will at all times reserve and keep available solely for issuance and delivery upon the conversion of the Series B Preferred Stock issued to Mobius and Meritage pursuant to this Agreement and the Series B Preferred Stock issuable pursuant to Section 5.7 of this Agreement, all common stock issuable from time to time upon such conversion.

Section 5.9 Matrix Liquidating Distributions. In making any liquidating distributions to holders of Matrix common stock following Closing pursuant to the Matrix Plan of Liquidation, Matrix shall require that any such common stockholder, as a condition to receiving Common Stock, (i) duly execute and deliver a copy of the Voting Trust Agreement attached hereto as Exhibit T (the "Voting Trust Agreement"), and (ii) establish that any such Matrix stockholder is an Accredited Investor.

Section 5.10 Name Change. Within ten (10) business days following Closing, Matrix shall change its name to one that does not create a reasonable likelihood of confusion in the mind of the public with the mark "Matrix," "Matrix NetSystems" or other Matrix trademarks.

Article VI—Closing Conditions

Section 6.1 Conditions to Each Party's Obligation. The respective obligations of each party to effect the Closing are subject to the satisfaction or waiver, as of the Closing Date, of the following conditions:

6.1.1 No Legal Prohibition. No statute, rule, regulation or order shall be enacted, promulgated, entered or enforced by any court or governmental authority which would prohibit consummation by such party of the transactions contemplated hereby.

6.1.2 No Injunction. Such party shall not be prohibited by any order, ruling, consent, decree, judgment or injunction of a court or regulatory agency of competent jurisdiction from consummating the transactions contemplated hereby.

Section 6.2 Conditions to Obligations of the Company. The obligations of the Company to close the transactions contemplated hereby shall be subject to the fulfillment and satisfaction, as of the Closing Date, of the following conditions:

6.2.1 Representations and Covenants. The representations and warranties of Matrix, Alignment and the Investors contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (other than representations and warranties made only as of a specified date, which shall be true and correct in all material respects as of such date). Matrix and Alignment shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

6.2.2 Approvals. All material governmental and third party approvals, consents, permits or waivers required by Matrix and Alignment for consummation of the transactions contemplated by this Agreement shall have been obtained in form and substance reasonably satisfactory to the Company.

6.2.3 Closing Deliveries. Matrix, Alignment and the Investors shall have executed and delivered such documents and taken such actions as contemplated by Section 3.2.

6.2.4 Stockholders Agreement. The Investors and each other holder of the Company's securities (giving effect to the liquidations of Matrix and Alignment) shall have executed and delivered the Stockholders Agreement.

Section 6.3 Conditions to Obligations of Matrix. The obligations of Matrix to close the transactions contemplated hereby shall be subject to the fulfillment and satisfaction, as of the Closing Date, of the following conditions:

6.3.1 Representations and Covenants. The representations and warranties of the Company, Alignment and the Investors contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (other than representations and warranties made only as of a specified date, which shall be true and correct in all material respects as of such date). Alignment, the Company and the Investors shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

6.3.2 Approvals. All material governmental and third party approvals, consents, permits or waivers required by Alignment, the Company and the Investors for consummation of the transactions contemplated by this Agreement shall have been obtained in form and substance reasonably satisfactory to Matrix.

6.3.3 Closing Deliveries. The Company, Alignment and the Investors shall have executed and delivered such documents and taken such actions as contemplated by Section 3.2.

6.3.4 Opinions. Matrix shall have received the opinion of Cooley Godward LLP, counsel to Alignment, in a form to be mutually agreed upon by the parties (the "Alignment Legal Opinion") and the opinion of Kamlet Shepherd Reichert & Edgington LLP, in a form to be mutually agreed upon by the parties (the "Company Legal Opinion").

6.3.5 Executive Employees. Each of Richard Schmelzer, William Palumbo and Stephen Buck (the "Executives") shall have entered into employment agreements with the Company, substantially in the form of the attached Exhibit U (each an "Executive Employment Agreement"), which employment agreements shall become effective as of Closing.

6.3.6 Other Employees. All Matrix and Alignment employees and consultants who have agreed to become employees or consultants of the Company following the Closing shall have executed and delivered to the Company Proprietary Invention Assignment Agreements in accordance with Exhibit V hereto ("PI Agreements") and related release agreements ("Releases") in accordance with Exhibit W hereto.

Section 6.4 Conditions to Obligations of Alignment. The obligations of Alignment to close the transactions contemplated hereby shall be subject to the fulfillment and satisfaction, as of the Closing Date, of the following conditions:

6.4.1 Representations and Covenants. The representations and warranties of the Company, Matrix and the Investors contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (other than representations and warranties made only as of a specified date, which shall be true and correct in all material respects as of such date). Matrix, the Company and the Investors shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

6.4.2 Approvals. All material governmental and third party approvals, consents, permits or waivers required by Matrix, the Company and the Investors for consummation of the transactions contemplated by this Agreement shall have been obtained in form and substance reasonably satisfactory to Alignment.

6.4.3 Closing Deliveries. The Company, Matrix and the Investors shall have executed and delivered such documents and taken such actions as contemplated by Section 3.2.

6.4.4 Opinion. Alignment and the Company shall have received the opinion of Holme Roberts & Owen LLP, counsel to Matrix, in a form to be mutually agreed upon by the parties (the "Matrix Opinion") and the Company Legal Opinion.

6.4.5 Executive Employees. Each of the Executives shall have entered into an Executive Employment Agreement, which employment agreements shall become effective as of Closing.

6.4.6 Other Employees. All Matrix and Alignment employees and consultants who have agreed to become employees or consultants of the Company following the Closing shall have executed and delivered to the Company the PI Agreements.

Section 6.5 Conditions to Obligations of the Investors. The obligation of each Investor to purchase shares of Series B Preferred Stock hereunder shall be subject to the fulfillment and satisfaction, as of the Closing Date, of the following conditions:

6.5.1 Representations and Covenants. The representations and warranties of the Company, Matrix and Alignment contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (other than representations and warranties made only as of a specified date, which shall be true and correct in all material respects as of such date). The Company shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

6.5.2 Approvals. All material governmental and third party approvals, consents, permits or waivers required by the Company, Matrix and Alignment for consummation of the transactions contemplated by this Agreement shall have been obtained in form and substance reasonably satisfactory to the Investors.

6.5.3 Business Combination. The transactions contemplated by Article I of this Agreement shall have been consummated in accordance with their terms.

6.5.4 Stockholders Agreement. The Company and the other stockholders of the Company party thereto shall have executed and delivered the Stockholders Agreement.

6.5.5 Concurrent Purchase. Each other Investor shall concurrently purchase the shares of Series B Preferred Stock to be acquired by it hereunder.

6.5.6 Legal Opinions. Each Investor shall have received the Company Legal Opinion.

Article VII—Miscellaneous

Section 7.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) By written consent of all the parties hereto.

(b) By any party if the Closing Date shall not have occurred on or before April 30, 2003 other than as a result of a breach by such party of its representations, warranties or other obligations hereunder.

Section 7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1 hereof, all obligations of the parties under this Agreement shall terminate without liability of any party to any other party, except (a) that the obligations set forth in the last sentence of Section 5.3 and in Section 5.4 of this Agreement shall survive any such termination and (b) for liability for actual fraud or willful breach of this Agreement.

Section 7.3 Certain Definitions. As used in this Agreement, the following terms have the meanings indicated below:

“Accredited Investor” shall mean an “accredited investor” within the meaning of Regulation D under the Securities Act.

“Cash-Equivalents” shall mean (a) short-term obligations of, or fully guaranteed by, the United States of America, (b) commercial paper rated A-1 or better by Standard & Poor's Ratings Group or its successors or P-1 or better by Moody's Investors Service, Inc. or its successors, or (c) certificates of deposit issued by and time deposits with commercial banks (whether domestic or foreign) having capital and surplus in excess of \$100,000,000.

“Contract” means any contract, lease, license, purchase or sales order or other agreement or binding commitment, whether or not in written form.

“Employee Benefit Plan” means any employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

“Encumbrance” means any mortgage, lien, security interest, security agreement, conditional sale or other title retention agreement, pledge, option, charge, assessment, restriction, encumbrance, adverse interest, restriction on transfer or any similar exception to or defect in title or ownership interest.

“Governmental Authorization” means any franchise, approval, authorization, permit, operating authority, license, registration, qualification or similar right obtained from any Governmental Body.

“Governmental Body” means (a) The United States of America, (b) any state, commonwealth, territory or possession of the United States of America and any political subdivision thereof (including counties, municipalities and the like), (c) any foreign (as to the United States of America) sovereign entity and any political subdivision thereof, or (d) any agency, authority or instrumentality of any of the foregoing, including any court, tribunal, department, bureau, commission or board.

“Intellectual Property” means any patent, trademark, service mark, copyright, trade name (and any registration, application for registration and renewal associated with the foregoing) and any trade secret or other proprietary intangible asset, including computer software, know-how and customer lists.

“Legal Requirement” means any statute, ordinance, code, law, rule, regulation, judgment, decree, order or other requirement, standard or procedure enacted, adopted or applied by any Governmental Body, including judicial decisions applying common law or interpreting any other Legal Requirement.

“Person” means any natural person, corporation, partnership, trust, unincorporated organization, association, limited liability company, Governmental Body or other entity.

“Proceeding” means any claim, action, suit or other legal proceeding or investigation by or before a Governmental Body.

“Related Party” means, in the case of Matrix, Alignment or the Company, any of such company’s directors or officers, any spouse or lineal descendant of any of such company’s directors or officers or any Person that beneficially owns securities of such company representing 10% or more of the ordinary voting power of such company.

“Return” means all returns, declarations, reports, forms, claims for refund, estimates, information returns and statements, including amendments, required to be filed or supplied to any Governmental Authority in connection with any Tax.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

Section 7.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, regardless of the choice of laws provisions of Colorado or any other jurisdiction.

Section 7.5 Entire Agreement. This Agreement (including the attached exhibits and schedules) constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, whether written and oral, among the parties or between any of them with respect to the subject matter of this Agreement.

Section 7.6 Amendment and Assignment. This Agreement may be amended only by a written agreement signed by all of the parties. Neither the rights nor the obligations of any party to this Agreement may be transferred or assigned. Any purported assignment of this Agreement shall be null, void and of no effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors. Each party intends that this Agreement shall not benefit or create any right or cause of action in any person other than the parties or as specifically expressed in this Agreement.

Section 7.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which independently shall be deemed to be an original and all of which taken together shall constitute one instrument.

Section 7.8 Expenses. Each party shall bear its own out-of-pocket expenses incurred in connection with the drafting, negotiation, execution, delivery and performance of this Agreement and the transactions contemplated hereby; provided, however, that the reasonable fees of counsel and accountants to Matrix and Alignment shall be assumed and paid for by the Company at the Closing.

Section 7.9 Non-Survival of Representations and Warranties. The representations and warranties of the parties shall not survive the Closing hereunder, except in the case of intentional or willful misrepresentation or for actual fraud. The parties agree that all covenants and agreements contained herein or in any instrument or other document delivered pursuant to this Agreement or in connection with the transactions contemplated hereby which by their terms survive the Closing shall survive the Closing and all such covenants and agreement which by their terms terminate at the Closing shall terminate at the Closing.

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