

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the quarterly period ended December 31, 2002.

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the transition period from _____ to _____.

Commission File Number (0-21767)

ViaSat, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

33-0174996
(I.R.S. Employer
Identification No.)

6155 El Camino Real, Carlsbad, California 92009
(760) 476-2200

(Address, including zip code, and telephone number, including area code, of principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer(as defined in Rule 12b-2 of the Exchange Act). Yes No

The number of shares outstanding of the registrant's Common Stock, \$.0001 par value, as of February 7, 2003 was 26,123,427.

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VIASAT, INC.

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VIASAT, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)

	March 31, 2002	December 31, 2002
Assets		
(Unaudited)		
Current assets:		
Cash and cash equivalents	\$ 6,464	\$ 4,240
Short-term investments	156	158
Accounts receivable, net	80,170	81,069
Inventory	30,116	33,008
Deferred income taxes	2,974	7,117
Prepaid expenses and other current assets	7,343	10,850
	<hr/>	<hr/>
Total current assets	127,223	136,442
Goodwill	19,456	19,493
Other intangible assets, net	43,922	37,587
Property and equipment, net	31,117	32,918
Other assets	16,949	18,115
	<hr/>	<hr/>
Total assets	\$238,667	\$244,555
	<hr/>	<hr/>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 16,069	\$ 23,669
Accrued liabilities	17,796	18,841
Line of credit	9,900	14,350
	<hr/>	<hr/>
Total current liabilities	43,765	56,860
Other liabilities	2,549	2,163
	<hr/>	<hr/>
Total liabilities	46,314	59,023
	<hr/>	<hr/>
Contingencies (Note 8)		
Minority interest in consolidated subsidiary	414	418
	<hr/>	<hr/>
Stockholders' equity:		
Common stock	2	3
Paid in capital	152,775	154,222
Retained earnings	39,485	31,136
Unearned compensation	(138)	(9)
Accumulated other comprehensive income (loss)	(185)	(238)
	<hr/>	<hr/>
Total stockholders' equity	191,939	185,114
	<hr/>	<hr/>
Total liabilities and stockholders' equity	\$238,667	\$244,555
	<hr/>	<hr/>

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)
(In thousands, except share data)**

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2001	2002	2001	2002
Revenues	\$ 50,089	\$ 48,962	\$ 148,447	\$ 131,322
Cost of revenues	34,040	39,718	101,960	100,996
Gross profit	16,049	9,244	46,487	30,326
Operating expenses:				
Selling, general and administrative	9,272	9,102	25,637	26,728
Independent research and development	2,532	2,517	5,643	11,704
Acquired in-process research and development	—	—	2,500	—
Amortization of intangible assets	1,379	2,112	3,094	6,335
Amortization of goodwill	435	—	1,307	—
Income (loss) from operations	2,431	(4,487)	8,306	(14,441)
Other income (expense):				
Interest income	75	3	481	33
Interest expense	(101)	(324)	(198)	(633)
Minority interest	(5)	(10)	(95)	(26)
Equity in loss of joint venture	(810)	(463)	(2,250)	(1,622)
Income (loss) before income taxes	1,590	(5,281)	6,244	(16,689)
Provision (benefit) for income taxes	(849)	(2,669)	654	(8,340)
Net income (loss)	\$ 2,439	\$ (2,612)	\$ 5,590	\$ (8,349)
Basic net income (loss) per share	\$.11	\$ (.10)	\$.25	\$ (.32)
Diluted net income (loss) per share	\$.10	\$ (.10)	\$.24	\$ (.32)
Shares used in basic net income (loss) per share computation	22,635,141	26,018,458	22,381,145	25,979,377
Shares used in diluted net income (loss) per share computation	23,440,711	26,018,458	23,281,104	25,979,377

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(In thousands)

	Nine Months Ended December 31,	
	2001	2002
Cash flows from operating activities:		
Net income (loss)	\$ 5,590	\$ (8,349)
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	4,916	7,469
Amortization of goodwill, intangible assets and software	4,466	7,155
Acquired in-process research and development	2,500	—
Deferred income taxes	(1,055)	(3,593)
Equity in loss of joint venture	2,250	1,622
Minority interest in consolidated subsidiary	61	4
Non-cash compensation	15	129
Tax benefit from exercise of stock options	—	11
Increase (decrease) in cash resulting from changes in, net of effects of acquisitions:		
Accounts receivable	(9,843)	(866)
Inventory	(4,301)	(3,059)
Other assets	4,916	(928)
Accounts payable	(56)	7,599
Accrued liabilities	(853)	1,032
Other liabilities	1,504	(311)
	<u>10,110</u>	<u>7,915</u>
Net cash provided by operating activities		
Cash flows from investing activities:		
Acquisition of a business	(11,424)	—
Investment in joint venture	(2,250)	(1,622)
Purchases of short-term investments, net	(153)	(2)
Investment in capitalized software	(6,912)	(5,149)
Purchases of property and equipment, net	(13,996)	(9,269)
	<u>(34,735)</u>	<u>(16,042)</u>
Net cash used in investing activities		
Cash flows from financing activities:		
Proceeds from line of credit	10,799	8,450
Payments on line of credit	—	(4,000)
Repayment of notes payable	(336)	—
Forfeited unexercised options	—	(53)
Proceeds from issuance of common stock, net of issuance costs	1,674	1,490
	<u>12,137</u>	<u>5,887</u>
Net cash provided by financing activities		
Effect of exchange rate changes on cash	(86)	16
	<u>(12,574)</u>	<u>(2,224)</u>
Net decrease in cash and cash equivalents		
Cash and cash equivalents at beginning of period	17,721	6,464
	<u>\$ 5,147</u>	<u>\$ 4,240</u>
Cash and cash equivalents at end of period		

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.

**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(UNAUDITED)****(In thousands, except share data)**

	Common Stock		Paid in Capital	Retained Earnings	Unearned Compensation	Accumulated Other Comprehensive Income (Loss)	Total	Comprehensive Income (Loss)
	Number of Shares	Amount						
Balance at March 31, 2002	25,908,373	\$ 2	\$152,775	\$39,485	\$(138)	\$(185)	\$191,939	
Tax benefit from exercise of stock options			11				11	
Exercise of stock options	22,487		163				163	
Issuance of stock under Employee Stock Purchase Plan	189,820	1	1,326				1,327	
Forfeited unexercised options			(53)				(53)	
Amortization of stock based compensation					129		129	
Net (loss)				(8,349)			(8,349)	\$(8,349)
Foreign currency translation						(53)	(53)	(53)
Comprehensive (loss)								\$(8,402)
Balance at December 31, 2002	26,120,680	\$ 3	\$154,222	\$31,136	\$ (9)	\$(238)	\$185,114	

See accompanying notes to condensed consolidated financial statements

VIASAT, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

Note 1 — Basis of Presentation

The accompanying condensed consolidated balance sheet as of December 31, 2002, the condensed consolidated statements of operations for the three and nine months ended December 31, 2001 and 2002, the condensed consolidated statements of cash flows for the nine months ended December 31, 2001 and 2002, and the condensed consolidated statement of stockholders' equity for the nine months ended December 31, 2002 have been prepared by the management of ViaSat, Inc., and have not been audited. These financial statements, in the opinion of management, include all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of the financial position, results of operations and cash flows for all periods presented. These financial statements should be read in conjunction with the financial statements and notes thereto for the year ended March 31, 2002 included in our 2002 Annual Report on Form 10-K. Interim operating results are not necessarily indicative of operating results for the full year.

Our consolidated financial statements include the assets, liabilities and results of operations of TrellisWare Technologies, Inc., a majority owned subsidiary of ViaSat. All significant intercompany amounts have been eliminated.

Certain prior period amounts have been reclassified to conform to the current period presentation.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Estimates have been prepared on the basis of the most current and best available information, and actual results could differ from those estimates. Significant estimates made by management include revenue recognition, capitalized software, allowance for doubtful accounts, warranty reserves and valuation of goodwill and other intangible assets.

In July 2002, the FASB issued SFAS No. 146 — *Accounting for Costs Associated with Exit or Disposal Activities*. SFAS No. 146 provides guidance on the recognition and measurement of liabilities associated with exit and disposal activities. Under SFAS No. 146, liabilities for costs associated with exit or disposal activities should be recognized when the liabilities are incurred and measured at fair value. This statement is effective prospectively for exit or disposal activities initiated after December 31, 2002. The adoption is not expected to have a material effect on the consolidated financial statements.

In December 2002, the FASB issued SFAS 148 — *Accounting for Stock-Based Compensation — Transition and Disclosure — an amendment of FAS 123*. Accounting for Stock-Based Compensation was issued to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of Statement 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The amendments to Statement 123 in paragraphs 2(a)-2(e) of this Statement shall be effective for financial statements for fiscal years ending after December 15, 2002.

In November 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), — *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*. FIN 45 requires that a liability be recorded in the guarantor's balance sheet upon issuance of a guarantee. In addition, FIN 45 requires disclosures about the guarantees that an entity has issued, including a rollforward of the entity's product warranty liabilities. We will apply the recognition provisions of FIN 45 prospectively to guarantees issued after December 31, 2002. The disclosure provisions of FIN 45 are effective for, and are reflected in, our financial statements for the third quarter of our fiscal year 2003. We do not expect the adoption of FIN 45 to have a material effect on our results of operations or financial condition.

Note 2 — Revenue Recognition

The majority of our revenues are derived from services performed under a variety of contracts including cost-plus-fixed fee, fixed-price, and time and materials type contracts. Generally, revenues are recognized as services are performed using the percentage of completion method, measured primarily by costs incurred to date compared with total estimated costs at completion or based on the number of units delivered. We provide for anticipated losses on contracts by a charge to income during the period in which they are first identified.

Contract costs with the U. S. Government and its prime contractors, including indirect costs, are subject to audit by and negotiations with U.S. Government representatives. These audits have been completed and agreed upon through fiscal year 1998. Contract revenues and accounts receivable are stated at amounts which are expected to be realized upon final settlement. While we believe that the results of such audit will have no material effect on our financial position or results of operations, there can be no assurance that no adjustment will be made and that, if made, such adjustments will not have a material effect on our financial position, cash flows, or results of operations.

Note 3 — Earnings Per Share

Common stock equivalents of 805,569 shares for the three months ended December 31, 2001 and 899,959 for the nine months ended December 31, 2001 respectively, were used to calculate diluted earnings per share. Potentially dilutive securities excluded from the calculation were 2,462,025 shares for the three months ended December 31, 2001 and 4,291,220 shares for the three months ended December 31, 2002. Potentially dilutive securities excluded from the calculation were 2,157,698 shares for the nine months ended December 31, 2001 and 4,291,220 shares for the nine months ended December 31, 2002. Potentially dilutive securities are primarily comprised of options granted under our stock option plan.

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Note 4 — Composition of Certain Balance Sheet Captions (in thousands)

	March 31, 2002	December 31, 2002
		(Unaudited)
Cash and cash equivalents:		
Cash	\$ 4,494	\$ 4,232
Investments in debt securities	1,970	8
	<u>\$ 6,464</u>	<u>\$ 4,240</u>
Accounts receivable, net:		
Billed	\$ 39,081	\$ 42,542
Unbilled	41,576	39,023
Allowance for doubtful accounts	(487)	(496)
	<u>\$ 80,170</u>	<u>\$ 81,069</u>
Inventory:		
Raw materials	\$ 13,268	\$ 24,463
Work in process	9,906	2,354
Finished goods	6,942	6,191
	<u>\$ 30,116</u>	<u>\$ 33,008</u>
Prepaid expenses and other current assets:		
Income taxes receivable	\$ 2,792	\$ 7,179
Prepaid expenses	2,762	2,202
Other	1,789	1,469
	<u>\$ 7,343</u>	<u>\$ 10,850</u>
Other intangible assets:		
Technology	\$ 26,770	\$ 26,770
Contracts and relationships	9,736	9,736
Non-compete agreement	7,950	7,950
Other intangibles	6,875	6,875
	<u>51,331</u>	<u>51,331</u>
Less accumulated amortization	(7,409)	(13,744)
	<u>\$ 43,922</u>	<u>\$ 37,587</u>
Property and equipment:		
Machinery and equipment	\$ 30,131	\$ 30,496
Computer equipment and software	15,783	17,389
Furniture and fixtures	2,030	2,133
Construction in progress	5,161	12,513
	<u>53,105</u>	<u>62,531</u>
Less accumulated depreciation	(21,988)	(29,613)
	<u>\$ 31,117</u>	<u>\$ 32,918</u>
Other assets:		
Capitalized software costs, net	\$ 12,313	\$ 16,642
Prepaid satellite services	2,500	—
Deferred income taxes	1,172	622
Other	964	851
	<u>\$ 16,949</u>	<u>\$ 18,115</u>
Accrued liabilities:		
Current portion of warranty reserve	\$ 494	\$ 1,384
Accrued vacation	3,284	2,945
Accrued bonus	1,952	—
Accrued 401(k) matching contribution	2,288	—
Collections in excess of revenues	6,090	12,869
Other	3,688	1,643

\$ 17,796

\$ 18,841

Note 5 — Accounting for Goodwill and Intangible Assets

The FASB issued SFAS No. 141 *Business Combinations* and SFAS No. 142 *Goodwill and Other Intangible Assets* in July 2001. SFAS No. 141 requires that all business combinations be accounted for using the purchase method. SFAS No. 141 also specifies criteria for recognizing and reporting intangible assets apart from goodwill; however, acquired workforce must be recognized and reported in goodwill. SFAS No. 142 requires that intangible assets with an indefinite life should not be amortized until their life is determined to be finite, and all other intangible assets must be amortized over their useful life. SFAS No. 142 also requires that goodwill not be amortized but instead tested for impairment in accordance with the provisions of SFAS No. 142 at least annually and more frequently upon the occurrence of specified events. In addition, all goodwill must be assigned to reporting units for purposes of impairment testing.

We adopted a portion of the provisions of these pronouncements effective July 1, 2001, as required for goodwill and intangible assets acquired in purchase business combinations consummated after June 30, 2001. We adopted the remaining provisions of SFAS No. 141 and SFAS No. 142 effective April 1, 2002. As a result of adopting SFAS No. 142 on April 1, 2002, acquired workforce with a net book value of \$3.4 million was reclassified to goodwill.

We have completed the first step of the two-step transitional impairment test which is to assess whether goodwill within our reporting units was impaired at the date of adoption of this pronouncement. The first step, which is our identification of any impairment of goodwill as of April 1, 2002, resulted in no impairment of goodwill for the adoption of SFAS No. 142. Since step two is required only if step one reveals an impairment, we are not required to complete step two and the transitional impairment testing is complete.

We will continue to make assessments of impairment on an annual basis in the fourth quarter of our fiscal years or more frequently if specific events occur. In assessing the value of goodwill, we must make assumptions regarding estimated future cash flows and other factors to determine the fair value of the reporting units. If these estimates or their related assumptions change in the future, we may be required to record impairment charges that would negatively impact operating results.

A reconciliation of results of operations adjusted to exclude amortization expense net of tax related to goodwill (including Acquired workforce) assuming adoption of SFAS 142 on April 1, 2001 is as follows (in thousands, except share data):

	Three months ended December 31, (unaudited)		Nine months ended December 31, (unaudited)	
	2001	2002	2001	2002
Reported net income (loss)	\$ 2,439	\$ (2,612)	\$ 5,590	\$ (8,349)
Goodwill amortization	261	—	785	—
Adjusted net income (loss)	<u>\$ 2,700</u>	<u>\$ (2,612)</u>	<u>\$ 6,375</u>	<u>\$ (8,349)</u>
Basic net income (loss) per share				
Reported net income (loss)	\$.11	\$ (.10)	\$.25	\$ (.32)
Goodwill amortization	.01	—	.03	—
Adjusted net income (loss)	<u>\$.12</u>	<u>\$ (.10)</u>	<u>\$.28</u>	<u>\$ (.32)</u>
Diluted net income (loss) per share				
Reported net income (loss)	\$.10	\$ (.10)	\$.24	\$ (.32)
Goodwill amortization	.02	—	.03	—
Adjusted net income (loss)	<u>\$.12</u>	<u>\$ (.10)</u>	<u>\$.27</u>	<u>\$ (.32)</u>
Shares used in per share calculation				
Basic	<u>22,635,141</u>	<u>26,018,458</u>	<u>22,381,145</u>	<u>25,979,377</u>
Diluted	<u>23,440,711</u>	<u>26,018,458</u>	<u>23,281,104</u>	<u>25,979,377</u>

The intangible assets are amortized using the straight-line method over their estimated useful lives of three to nine years. The technology intangible asset has several components with estimated useful lives of six to nine years, contracts and relationships intangible asset has several components with estimated useful lives of three to nine years and non-compete agreements have useful lives of three to five years.

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The current and expected amortization expense for each of the following periods is as follows (in thousands):

	Amortization
For the nine months ended December 31, 2002	\$6,335
Expected for the remainder of fiscal year 2003	2,112
Expected for fiscal year 2004	7,842
Expected for fiscal year 2005	6,642
Expected for fiscal year 2006	6,048
Expected for fiscal year 2007	5,376

The changes in the carrying amount of goodwill during the period (in thousands):

Balance of goodwill acquired at March 31, 2002	\$19,456
Adjustment to goodwill for additional acquisition costs incurred	37
Amount of impairment losses recognized	—
Balance of goodwill acquired at December 31, 2002	\$19,493

Note 6 — Notes Payable and Line of Credit

On February 10, 2003, we executed an Amended and Restated Revolving Loan Agreement of \$20 million with Union Bank of California and Comerica Bank — California. Under the revolving facility we have the option to borrow at the bank's prime rate or at LIBOR plus, in each case, an applicable margin. The revolving facility contains financial covenants that set maximum debt to EBITDA limits, minimum quarterly EBITDA limits, minimum quick ratio limit and a minimum tangible net worth limit. The borrowing commitment is also limited by ViaSat's level of accounts receivable and inventory. The revolving facility's maturity date is September 30, 2003 and is collateralized by cash, accounts receivable and inventory of ViaSat.

Note 7 — Product Warranty

We provide limited warranties on most of our products for periods of up to five years. We record a liability for our warranty obligations when products are shipped based upon an estimate of expected warranty costs. Amounts expected to be incurred within twelve months are classified as a current liability. For mature products the warranty costs estimates are based on historical experience with the particular product. For newer products that do not have a history of warranty costs, we base our estimates on our experience with the technology involved and the types of failure that may occur. It is possible that our underlying assumptions will not reflect the actual experience and in that case, future adjustments will be made to the recorded warranty obligation. The following table reflects the change in our warranty accrual during the three and nine month periods ended December 31, 2002 (in thousands).

	For the three months ended December 31, 2002	For the nine months ended December 31, 2002
Balance, beginning of period	\$1,681	\$1,498
Change in liability for warranties issued in period	569	1,115
Settlements made (in cash or in kind) during the period	(65)	(428)
Balance, December 31, 2002	\$2,185	\$2,185

Note 8 — Contingencies

On December 5, 2001 Astrolink International LLC terminated for convenience two of our ground segment contracts. At the time of termination, Astrolink's investors had announced that they would not invest further in the Astrolink program. These two contracts relate to the development and production of subscriber terminals and service provider gateways for the Astrolink satellite system. Astrolink contracts accounted for approximately 10% of our revenues in fiscal year 2002. We have not recorded any revenue related to the Astrolink contracts in fiscal year 2003.

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On January 19, 2003 we reached a settlement with Astrolink with respect to contractual termination payments. We received a cash payment of \$6.5 million. Depending on the implementation of the Astrolink business plan, we may also receive additional consideration in the form of cash, a consulting contract and satellite airtime from the new Astrolink business providing aggregate additional value of approximately \$4.5 million under specified circumstances or may receive certain non-cash consideration in the form of capital equipment under other circumstances. The assets at risk prior to the Astrolink settlement were accounts receivable due from Astrolink in the amount of approximately \$6.3 million, inventory specific to Astrolink of \$0.4 million and \$2.5 million in prepaid airtime on Astrolink satellites. The value of the future consideration from the settlement will depend on the new Astrolink business. Due to the contingent nature and uncertainty of the value of the additional consideration to be received by us pursuant to the settlement, we have reduced our assets related to Astrolink to \$6.3 million of accounts receivable and \$0.2 million of inventory as of December 31, 2002. The cash received from Astrolink in the amount of \$6.5 million will be applied against these assets in our fourth quarter of fiscal 2003. After applying the cash received of \$6.5 million, we will have reduced our assets related to Astrolink to zero. As a result, we have taken a charge through cost of revenue for the \$2.5 million of prepaid airtime and \$0.2 million of inventory in the quarter ended December 31, 2002.

Astrolink Related Assets (in millions)	Accounts Receivable	Prepaid Airtime	Inventory	Total
Balance at September 30, 2002	\$6.3	\$2.5	\$0.4	\$9.2
Recognized as expense during the quarter ended December 31, 2002	-0-	\$2.5	\$0.2	\$2.7
	—	—	—	—
Balance at December 31, 2002	\$6.3	-0-	\$0.2	\$6.5

We are currently a party to various government and commercial contracts which require us to meet performance covenants and project milestones. Under the terms of these contracts, failure by us to meet performance covenants and milestones permit the other party to terminate the contract and, under specified circumstances, recover liquidated damages or other penalties. We are currently not in compliance (or in the past were not in compliance) with the performance or milestone requirements of a portion of these contracts. Historically, our customers have not elected to terminate such contracts or seek liquidated damages from us and we do not believe that our existing customers will do so; therefore, we have not accrued for any possible liquidated damages or penalties.

Note 9 — Immeon Networks, L.L.C.

In January 2001 ViaSat and Loral Skynet formed a joint venture named Immeon Networks, L.L.C. (Immeon). We account for our investment under the equity method because we have significant influence, but not control, of the operations of Immeon. During periods of operating losses of Immeon, those losses are allocated to ViaSat and Loral Skynet according to each venture's contribution to Immeon. If Immeon attains profitability in the future, contributions previously provided by the joint venturers will be reimbursed based on the allocation of profits. Once all contributions have been fully reimbursed to the respective venturer, each venturer is entitled to 50% of the net profits of Immeon, subject to specified adjustments. To date, we have provided services to Immeon. As such, in accordance with the terms of the joint venture agreement, the services are considered contributions to Immeon for the purposes of determining the allocation of the net loss of Immeon to the venturers. Our share of the operating losses of Immeon for the three months ended December 31, 2001 was \$720,000 and our share of the operating losses of Immeon for the three months ended December 31, 2002 was \$463,000. Our share of the operating losses of Immeon for the nine months ended December 31, 2001 was \$2.2 million and our share of the operating losses of Immeon for the nine months ended December 31, 2002 was \$1.6 million. Our share of the net losses of Immeon is limited to the extent of our investment in (including contributions in the form of services), advances to and financial guarantees that create additional basis in Immeon. Our share of losses and advances to Immeon has reduced our investment, including contributions in the form of services, to zero. We have a services agreement with Immeon to perform services for the operation of Immeon. We maintain an obligation to provide service to Immeon customers through the end of its customer contracts in 2004.

Note 10 — Income Taxes

Our effective income tax rate changed from a provision of 10.5% for the nine months ended December 31, 2001 to a benefit of 50.0% for the nine months ended December 31, 2002. In calculating the tax benefit for the three months and nine months ended December 31, 2002 we applied a 40% tax rate to income before taxes and combined the result with the estimated research and development tax credit generated for the period. Our estimated annual effective rate for the fiscal year is influenced by the amount of research and development tax credit relative to income before taxes. Since the research and development tax credit is not variable to income, fluctuations in estimated annual income before taxes can cause disproportionate changes in the tax provision.

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On a quarterly basis, management evaluates the realizability of our deferred tax assets and assesses the need for a valuation allowance. Realization of our net deferred tax assets is dependent on our ability to generate approximately \$12.9 million of future taxable income. We believe that it is more likely than not that our net deferred tax assets will be realized based on forecasted income. The amount of the net deferred tax assets actually realized could vary if there are differences in the timing or amount of future reversals of existing deferred tax liabilities or changes in the actual amounts of future taxable income. We have incurred losses from operations over the past several quarters. If our operating results do not improve significantly in the near term and if the outlook remains unclear, we will be required to establish a valuation allowance against all of our net deferred tax assets based upon applicable accounting criteria. To the extent we establish a valuation allowance, an expense will be recorded within the provision for income taxes line in the Statement of Operations.

Note 11 — Segment Information

We are organized primarily on the basis of products with commercial and government (defense) communication applications. The following table summarizes revenues and operating profits by operating segment for the three months and nine months ended December 31, 2001 and 2002. Certain corporate general and administrative costs, amortization of intangible assets and charges of acquired in-process research and development are not allocated to either segment and accordingly, are shown as reconciling items from segment operating profit and consolidated operating profit. Assets are not tracked by operating segment. Consequently, it is not practical to show assets by operating segments. Depreciation expense is allocated to operating segments as an overhead charge based on direct labor dollars within the operating segments (in thousands).

	Three months ended December 31, (unaudited)		Nine months ended December 31, (unaudited)	
	2001	2002	2001	2002
Revenues				
Commercial	\$35,734	\$25,769	\$103,185	\$ 71,341
Government	14,355	23,193	45,262	59,981
Total Revenues	50,089	48,962	148,447	131,322
Operating Profits				
Commercial	2,425	(4,280)	9,347	(18,267)
Government	2,117	1,896	6,441	9,727
Segment operating profit before corporate	4,542	(2,384)	15,788	(8,540)
Corporate	(297)	9	(581)	434
Amortization of intangibles	(1,814)	(2,112)	(4,401)	(6,335)
Acquired in-process research and development	—	—	(2,500)	—
Total operating profits	\$ 2,431	\$ (4,487)	\$ 8,306	\$ (14,441)

Revenue information by geographic area for the three and nine month periods ended December 31, 2001 and 2002 is as follows:

	Three months ended December 31, (unaudited)		Nine months ended December 31, (unaudited)	
	2001	2002	2001	2002
North America	\$32,769	\$39,976	\$110,376	\$102,937
Europe	8,983	6,155	18,575	16,732
Asia Pacific	7,915	2,326	18,066	10,025
Latin America	422	505	1,430	1,628
	\$50,089	\$48,962	\$148,447	\$131,322

We distinguish revenues from external customers by geographic areas based on customer location.

The book value of long-lived assets located outside the United States was \$606,000 at December 31, 2001 and \$316,000 at December 31, 2002.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following information should be read in conjunction with the condensed consolidated financial statements and the notes thereto included in Item 1 of this Quarterly Report and the audited consolidated financial statements and notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations included in ViaSat's Annual Report on Form 10-K for the year ended March 31, 2002, filed with the Securities and Exchange Commission.

Except for the historical information contained herein, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Actual results may differ substantially from those referred to herein due to a number of factors, including but not limited to risks described in the section entitled "Factors That May Affect Future Performance" and elsewhere in this Quarterly Report.

General

ViaSat was incorporated in 1986 and completed its initial public offering in 1996. We are a leading provider of advanced broadband digital satellite communications and other wireless networking and signal processing equipment and services to the defense and commercial markets. Based on our extensive experience in complex defense communications systems, we have developed the capability to design and implement innovative communications solutions that enhance bandwidth utilization by applying our sophisticated networking and digital signal processing techniques. Our goal is to leverage our advanced technology and capabilities to capture a significant share of the global satellite communications services and equipment segment of the broadband communications market for both government and commercial customers.

Critical Accounting Policies and Estimates

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses ViaSat's consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The policies discussed below are considered by management to be critical to an understanding of our financial statements because their application places the most significant demands on management's judgment, with financial reporting results relying on estimation about the effect of matters that are inherently uncertain. Specific risks for these critical accounting policies are described in the following paragraphs. For all of these policies, management cautions that future events rarely develop exactly as forecast, and even the best estimates routinely require adjustment.

Revenue recognition

Our revenue recognition policy is significant because our revenue is a key component of our results of operations. Generally, revenues are recognized as services are performed using the percentage of completion method, measured primarily by costs incurred to date compared with total estimated costs at completion or based on the number of units delivered. Historically, we have been able to make reliable estimates and have therefore been able to reasonably determine our percent complete. However, many of our contracts involve the development of new technology and, as a result, the development of estimates underlying our percent complete is inherently subject to greater uncertainty. Even with our experience in estimating contract costs it is possible that our actual results could ultimately differ from our estimates, or that estimates could change as we make progress on a contract. Either of these potential outcomes would result in adjustments to the revenues and profits recorded on a contract. From time to time we have recorded such changes in estimate. We encounter multiple awards to a single contract that may occur simultaneously or over time. The separate awards are treated as part of the same contract when recognizing revenue on the percentage of completion method when the awards: 1) are negotiated as a package in the same economic environment with an overall profit margin objective, 2) constitute in essence an agreement to do a single project, 3) require closely interrelated activities with substantial common costs that cannot be separately identified with, or reasonably allocated to, the elements, phases or units of output, 4) are performed concurrently or in a continuous sequence under the same project management at the same location or at different location in the same general vicinity, and 5) constitute in substance an agreement with a single customer. It is also possible that adjusted estimates could indicate that we will incur a loss on a contract. We provide for anticipated losses on contracts by a charge to income during the period in which they are first identified.

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Revenues from contracts not on percentage of completion method are generally recognized when the title is transferred, the risk of loss passes, price is fixed or determinable and collectibility is probable. Revenues from services are recognized when services are provided which is generally ratable over the period of the contract.

Capitalized Software Development Costs

Software development costs incurred from the time technological feasibility is reached until the product is available for general release to customers are capitalized and reported at the lower of unamortized cost or net realizable value. Once the product is available for general release, the software development costs are amortized based on the ratio of current to future revenue for each product with an annual minimum equal to straight-line amortization over the remaining estimated economic life of the product. The determination of net realizable value involves judgement and estimates of future revenues to be derived from a product, as well as estimates of future costs of manufacturing that product. We use our experience in the marketplace in making judgements in estimating net realizable value, but our estimates may differ from the actual outcome. We periodically assess the assumptions underlying our estimates and, if necessary, we would adjust the carrying amount of capitalized software development costs downward to our new estimate of net realizable value.

At March 31, 2002, \$12.6 million of software development costs had been incurred and as of December 31, 2002 a total of \$17.8 million of software development costs had been incurred. Amortization expense related to software development costs for the three months ended December 31, 2001 was \$38,000 and amortization expense related to software development costs for the three months ended December 31, 2002 was \$290,000. Amortization expense related to software development costs for the nine months ended December 31, 2001 was \$65,000 and amortization expense related to software development costs for the nine months ended December 31, 2002 was \$820,000. These software development costs are part of other assets on the balance sheet and the related amortization expense is recorded as a charge to cost of revenues on the income statement.

Allowance for doubtful accounts

We make estimates of the collectibility of our accounts receivable based on historical bad debts, customer credit-worthiness and current economic trends when evaluating the adequacy of the allowance for doubtful accounts. Historically, our bad debts have been minimal; a contributing factor to this is that a large portion of our sales have been to the U.S. Government. Our accounts receivable balance was \$81.1 million, net of allowance for doubtful accounts of \$496,000 as of December 31, 2002.

Allowance for warranty reserves

We provide limited warranties on most of our products for periods of up to five years. We record a liability for our warranty obligations when products are shipped based upon an estimate of expected warranty costs. Amounts expected to be incurred within twelve months are classified as a current liability. For mature products the warranty costs estimates are based on historical experience with the particular product. For newer products that do not have a history of warranty costs, we base our estimates on our experience with the technology involved and the types of failure that may occur. It is possible that our underlying assumptions will not reflect the actual experience and in that case, future adjustments will be made to the recorded warranty obligation.

Goodwill and other intangible assets

The acquisition of the satellite networks business from Scientific-Atlanta in fiscal year 2001 and Comsat Laboratories and U.S. Monolithics in fiscal year 2002 were accounted for by the purchase method of accounting. An independent appraiser was used to assist management in identifying the intangible assets acquired and establishing their fair value and estimated lives of the goodwill and other intangible assets. The criteria used for these appraisals include management's estimates of cash flows to be generated by these intangible assets in future periods. Useful lives and related amortization expense are based on our estimates of the periods that the assets will generate revenues or otherwise be used by us. Factors that would influence the likelihood of a material change in our reported results include significant changes in our estimates of future cash flow, significant changes in our strategic business objectives, or significant negative changes in industry or economic trends.

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As required in Statement of Financial Accounting Standards (“SFAS”) Nos. 142 and 144, we will perform periodic reviews for impairment of goodwill and other intangible assets. There are many management assumptions and estimates underlying the determination of an impairment loss, and estimates using different, but reasonable, assumptions could produce significantly different results. Therefore, the timing and recognition of impairment losses by us in the future, if any, will continue to be dependent upon our estimates and assumptions. We have completed the first step of the two-step transitional impairment test required under SFAS No. 142 which is to assess whether goodwill within our reporting units was impaired at the date of adoption of this pronouncement. The first step, which is our identification of any impairment of goodwill as of April 1, 2002 resulted in no impairment of goodwill for the adoption of SFAS No. 142. Since step two is required if step one reveals an impairment, we were not required to complete step two and the transitional impairment testing is complete.

We will continue to make assessments of impairment on an annual basis in the fourth quarter of our fiscal years or more frequently if specific events occur. In assessing the value of goodwill, we must make assumptions regarding estimated future cash flows and other factors to determine the fair value of the reporting units. If these estimates or their related assumptions change in the future, we may be required to record impairment charges that would negatively impact operating results. As of December 31, 2002, the carrying value of goodwill was \$19.5 million.

Income tax valuation allowance

On a quarterly basis, management evaluates the realizability of our deferred tax assets and assesses the need for a valuation allowance as of December 31, 2002. Realization of our net deferred tax assets is dependent on our ability to generate approximately \$12.9 million of future taxable income. We believe that it is more likely than not that our net deferred tax assets will be realized based on forecasted income. The amount of the net deferred tax assets actually realized could vary if there are differences in the timing or amount of future reversals of existing deferred tax liabilities or changes in the actual amounts of future taxable income. We have incurred losses from operations over the past several quarters. If our operating results do not improve significantly in the near term and if the outlook remains unclear we will be required to establish a valuation allowance against all of our net deferred tax assets based upon applicable accounting criteria. To the extent we establish a valuation allowance, an expense will be recorded within the provision for income taxes line in the Statement of Operations.

Results of Operations

The following table presents, as a percentage of total revenues, income data for the periods indicated.

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2001	2002	2001	2002
Revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues	68.0	81.1	68.7	76.9
Gross profit	32.0	18.9	31.3	23.1
Operating expenses:				
Selling, general and administrative	18.5	18.6	17.3	20.4
Independent research and development	5.1	5.2	3.8	8.9
Acquired in-process research and development	—	—	1.7	—
Amortization of intangible assets	2.7	4.3	2.1	4.8
Amortization of goodwill	0.9	—	0.9	—
Income from operations	4.8	(9.2)	5.5	(11.0)
Income before income taxes	3.2	(10.8)	4.2	(12.7)
Net income	4.9	(5.3)	3.8	(6.4)

Three Months Ended December 31, 2001 vs. Three Months Ended December 31, 2002

Revenues. Revenues decreased 2.2% from \$50.1 million for the three months ended December 31, 2001 to \$49.0 million for the three months ended December 31, 2002. This decrease was primarily due to a decrease in our broadband systems business area resulting from contract terminations and suspensions occurring in the third and fourth quarters of our prior fiscal year. This decrease was offset by increased revenue from our government systems business.

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Gross Profit. Gross profit decreased 42.5% from \$16.0 million (32.0% of revenues) for the three months ended December 31, 2001 to \$9.2 million (18.9% of revenues) for the three months ended December 31, 2002. This decrease was primarily due to lower sales volumes in the broadband systems business area, which contributed less gross margin, and the settlement with Astrolink as we recorded a \$2.7 million charge to cost of revenues for the three months ended December 31, 2002. We also experienced a lower gross margin as a percentage of revenue in the government systems business.

Selling, General and Administrative Expenses. Selling, general and administrative (“SG&A”) expenses decreased 2.2% from \$9.3 million (18.5% of revenues) for the three months ended December 31, 2001 to \$9.1 million (18.6% of revenues) for the three months ended December 31, 2002. The decrease in SG&A costs resulted from implemented cost reductions, partially offset by increased personnel and facilities associated with our U.S. Monolithics operation acquired in the fourth quarter of last fiscal year. SG&A expenses consist primarily of personnel costs and expenses for business development, marketing and sales, bid and proposal, finance, contract administration and general management. Some of these expenses are difficult to predict and vary based on specific government and commercial sales opportunities.

Independent Research and Development. Independent research and development (“IR&D”) expenses were \$2.5 million (5.1% of revenues) for the three months ended December 31, 2001, and \$2.5 million (5.2% of revenues) for the three months ended December 31, 2002. IR&D spending has been reduced from the level of the prior two quarters as personnel has been reduced or reassigned to customer funded programs.

Amortization of Goodwill and Intangible Assets. The acquisition of the Satellite Networks Business in fiscal year 2001 and Comsat Laboratories in the second quarter of fiscal year 2002 and U.S. Monolithics in the fourth quarter of fiscal year 2002 were accounted for by the purchase method of accounting. The dates of acquisition of Comsat Laboratories and U.S. Monolithics were both after June 30, 2001 and were accounted for under SFAS 141. Therefore, the goodwill of those two acquisitions has not been subject to amortization. As a result of adopting SFAS 142 for our fiscal year ending March 31, 2003, we no longer amortize the intangibles assets “Acquired workforce” of \$5.5 million or “Goodwill” of \$4.5 million acquired in the Satellite Networks Business acquisition. “Acquired workforce” did not meet the separability requirements of SFAS 141 and has been subsumed into goodwill beginning April 1, 2002. The intangible assets are being amortized over useful lives ranging from two to ten years. Below is the allocation of the amortization expense for the three month periods ended December 31, 2001 and 2002 (in thousands).

	Amortization for the three months ended December 31,	
	2001	2002
Existing technology	\$ 483	\$ 950
Contracts and relationships	276	276
Non-compete agreements	446	575
Other amortizable assets	173	311
Acquired workforce	274	—
Goodwill	162	—
Totals	\$1,814	\$2,112

The increase in amortization expense was due to the increase in intangible assets related to recent acquisitions.

Interest Expense. Interest expense increased from \$101,000 for the three months ended December 31, 2001 to \$324,000 for the three months ended December 31, 2002. Interest expense relates to short-term borrowings under our line of credit to cover working capital requirements. There was \$10.8 million in outstanding borrowings under our line of credit as of December 31, 2001. At December 31, 2002 there was \$14.4 million in outstanding borrowings under our line of credit. The increase in interest expense was from higher debt levels and loan fees.

Interest Income. Interest income decreased from \$75,000 for the three months ended December 31, 2001 to \$3,000 for the three months ended December 31, 2002. This decrease resulted from a decrease in invested balances and lower rates of earning. Interest income relates largely to interest earned on short-term deposits of cash.

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Provision for Income Taxes. Our effective income tax rate changed from a benefit of (53.4%) for the three months ended December 31, 2001 to a benefit of 50.5% of the loss before income taxes for the three months ended December 31, 2002. In calculating the tax benefit for the three months ended December 31, 2002 we applied a 40% tax rate to income before taxes and combined the result with the research and development tax credit estimated for the period. Our estimated annual effective rate for the fiscal year is influenced by the amount of research and development tax credit relative to income before taxes. Since the research and development tax credit is not variable to income, fluctuations in estimated annual income before taxes can cause disproportionate changes in the tax provision. The tax benefit for the three months ended December 31, 2001 included a change in estimated research and development tax credit for the fiscal years ending March 31, 2001 and March 31, 2002. The change in estimate was made based upon historical detailed information received from Scientific-Atlanta, Inc. for calculating base period percentages.

Nine Months Ended December 31, 2001 vs. Nine Months Ended December 31, 2002

Revenues. Revenues decreased 11.5% from \$148.4 million for the nine months ended December 31, 2001 to \$131.3 million for the nine months ended December 31, 2002. This decrease was primarily due to a decrease in our broadband systems business area and satellite ground systems business area resulting from contract terminations and suspensions occurring in the third and fourth quarters of our prior fiscal year partially offset by an increase in revenue from government systems business.

Gross Profit. Gross profit decreased 34.8% from \$46.5 million (31.3% of revenues) for the nine months ended December 31, 2001 to \$30.3 million (23.1% of revenues) for the nine months ended December 31, 2002. This decrease was primarily due to lower sales volumes in the satellite ground systems and broadband systems business areas, which contributed less gross margin, a cost over-run on a broadband program while it transitioned from development into the initial phases of production and the settlement with Astrolink as we recorded a \$2.7 million charge to cost of revenues for the nine months ended December 31, 2002. In addition, we experienced lower margins in the commercial VSAT products business area from market pricing pressure, changes in product sales mix and cost over-runs on certain projects. These gross margin reductions were partially offset by an increase in gross profit from our government systems business.

Selling, General and Administrative Expenses. SG&A expenses increased 4.3% from \$25.6 million (17.3% of revenues) for the nine months ended December 31, 2001 to \$26.7 million (20.4% of revenues) for the nine months ended December 31, 2002. The increased SG&A costs primarily relate to the increased personnel and facilities associated with our U.S. Monolithics (USM) operation acquired in the fourth quarter of last fiscal year and were partially offset by implemented cost reductions.

Independent Research and Development. IR&D expenses increased 108.9% from \$5.6 million (3.8% of revenues) for the nine months ended December 31, 2001 to \$11.7 million (8.9% of revenues) for the nine months ended December 31, 2002. IR&D spending has increased across all of our business areas and is attributable to lower customer funded research and development and investments in the development of new technologies that enable our company to maintain its competitiveness. This trend began to change in the quarter ended December 31, 2002, as personnel has been reduced or reassigned to customer funded research and development programs.

Acquired In-Process Research and Development. Purchased in-process research and development charges resulted from the acquisition of Comsat Laboratories and accounted for \$2.5 million (1.7% of revenues) in the nine months ended December 31, 2001.

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Amortization of Goodwill and Intangible Assets. The acquisition of the Satellite Networks Business in fiscal year 2001 and Comsat Laboratories and U.S. Monolithics in fiscal year 2002 were accounted for by the purchase method of accounting. The dates of acquisition of Comsat Laboratories and U.S. Monolithics were both after June 30, 2001 and were accounted for under SFAS 141. Therefore, the goodwill of those two acquisitions has not been subject to amortization. As a result of adopting SFAS 142 for our fiscal year ending March 31, 2003, we no longer amortize the intangibles assets "Acquired workforce" of \$5.5 million or "Goodwill" of \$4.5 million acquired in the Satellite Networks Business acquisition. "Acquired workforce" did not meet the separability requirements of SFAS 141 and has been subsumed into goodwill beginning April 1, 2002. The intangible assets are being amortized over useful lives ranging from two to ten years. Below is the allocation of the amortization expense for the nine month periods ended December 31, 2001 and 2002 (in thousands).

	Amortization for the nine months ended December 31,	
	2001	2002
Existing technology	\$1,236	\$2,850
Contracts and relationships	826	827
Non-compete agreements	743	1,725
Other amortizable assets	288	933
Acquired workforce	822	—
Goodwill	486	—
Totals	\$4,401	\$6,335

Interest Expense. Interest expense increased from \$198,000 for the nine months ended December 31, 2001 to \$633,000 for the nine months ended December 31, 2002. Interest expense relates to short-term borrowings under our line of credit to cover working capital requirements. The increase in interest expense was from higher debt levels and loan costs and was partially offset by lower interest rates related to these borrowings. Outstanding borrowings under our line of credit were \$10.8 million at December 31, 2001 and \$14.4 million at December 31, 2002.

Interest Income. Interest income decreased from \$481,000 for the nine months ended December 31, 2001 to \$33,000 for the nine months ended December 31, 2002. This decrease resulted from a decrease in invested balances and lower rates of earning. Interest income relates largely to interest earned on short-term deposits of cash.

Provision for Income Taxes. Our effective income tax rate changed from a provision of 10.5% for the nine months ended December 31, 2001 to a benefit of 50.0% for the nine months ended December 31, 2002. In calculating the tax benefit for the nine months ended December 31, 2002 we applied a 40% tax rate to income before taxes and combined the result with the research and development tax credit estimated for the period. Our estimated annual effective rate for the fiscal year is influenced by the amount of research and development tax credit relative to income before taxes. Since the research and development tax credit is not variable to income, fluctuations in estimated annual income before taxes can cause disproportionate changes in the tax provision. The tax provision for the nine months ended December 31, 2001 included a change in estimated research and development tax credit for the years ending March 31, 2001 and March 31, 2002. The change in estimate was made based upon historical detailed information received from Scientific-Atlanta, Inc. for calculating base period percentages.

Backlog

At December 31, 2002 we had firm backlog of \$207.6 million of which \$171.3 million was funded. The firm backlog of \$207.6 million does not include contract options of \$83.4 million. Of the \$207.6 million in firm backlog, approximately \$39.6 million is expected to be delivered in the fiscal year ending March 31, 2003, and the balance is expected to be delivered in the fiscal year ending March 31, 2004 and thereafter. At March 31, 2002 we had firm backlog of \$139.4 million, of which \$124.2 million was funded, not including options of \$48.8 million. We include in our backlog only those orders for which we have accepted purchase orders.

Backlog is not necessarily indicative of future sales. A majority of our U.S. government contracts can be terminated at the convenience of the customer since orders are often made substantially in advance of delivery, and our U.S. government contracts typically provide that orders may be terminated with limited or no penalties. Further, most of our commercial contracts do not contain specific termination liability amounts, and therefore, upon termination by a commercial customer we would only be entitled to damages provided by law. These damages would likely be substantially less than the full value of the contract. In addition, purchase orders may provide product specifications that would require us to complete additional product development. A failure to develop products meeting such specifications could lead to a termination of the contract or related purchase order.

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The backlog amounts as presented are comprised of funded and unfunded components. Funded backlog represents the sum of contract amounts for which funds have been specifically obligated by customers to contracts. Unfunded backlog represents future amounts that customers may obligate over the specified contract performance periods. Our customers allocate funds for expenditures on long-term contracts on a periodic basis. Our ability to realize revenues from contracts in backlog is dependent upon adequate funding for these contracts. Although funding of our contracts is not within our control, our experience indicates that actual contract fundings have ultimately been approximately equal to the aggregate amounts of the contracts.

Recent Accounting Pronouncement

In July 2002, the FASB issued SFAS No. 146 — *Accounting for Costs Associated with Exit or Disposal Activities*. SFAS No. 146 provides guidance on the recognition and measurement of liabilities associated with exit and disposal activities. Under SFAS No. 146, liabilities for costs associated with exit or disposal activities should be recognized when the liabilities are incurred and measured at fair value. This statement is effective prospectively for exit or disposal activities initiated after December 31, 2002. The adoption is not expected to have a material effect on the consolidated financial statements.

In December 2002, the FASB issued SFAS 148 — *Accounting for Stock-Based Compensation — Transition and Disclosure — an amendment of FAS 123*. Accounting for Stock-Based Compensation was issued to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of Statement 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The amendments to Statement 123 in paragraphs 2(a)-2(e) of this Statement shall be effective for financial statements for fiscal years ending after December 15, 2002.

Liquidity and Capital Resources

We have financed our operations to date primarily with cash flows from operations, bank line of credit financing, equity financing and loans for the purchase of capital equipment. Cash provided by operating activities for the nine months ended December 31, 2002 and December 31, 2001 was \$7.9 million and \$10.1 million. We used cash to fund a net loss of \$8.3 million for the nine months ended December 31, 2002. Increases in inventory and other assets along with an increase in accrued liabilities caused a reduction in cash which was partially offset by an increase in accounts payable.

Cash used in investing activities for the nine months ended December 31, 2001 was \$34.7 million and cash used in investing activities for the nine months ended December 31, 2002 was \$16.0 million. We acquired \$14.0 million in equipment and invested \$6.9 million in capitalized software in the nine months ended December 31, 2001 compared to \$9.3 million of equipment and \$5.1 million of capitalized software during the nine months ended December 31, 2002.

Cash provided by financing activities for the nine months ended December 31, 2001 was \$12.1 million and cash provided by financing activities for the nine months ended December 31, 2002 was \$5.9 million. This decrease was primarily the result of net loan proceeds from our line of credit of \$10.8 million and \$4.5 million in the nine months ended December 31, 2001 and 2002, respectively.

At December 31, 2002, we had \$4.4 million in cash, cash equivalents and short-term investments and \$79.6 million in working capital. We had \$14.4 million in outstanding borrowings under our line of credit and \$1.5 million in outstanding standby letters of credit at December 31, 2002. With the limitation of borrowing based on levels of accounts receivable and inventory, additional borrowing availability under the revolving loan facility was \$4.1 million at December 31, 2002.

On February 10, 2003, we executed an Amended and Restated Revolving Loan Agreement of \$20 million with Union Bank of California and Comerica Bank — California. Under the revolving loan facility we have the option to borrow at the bank's prime rate or at LIBOR plus, in each case, an applicable margin. The revolving facility contains financial covenants that set maximum debt to EBITDA limits, minimum quarterly EBITDA limits, minimum quick ratio limit and a minimum tangible net worth limit. The borrowing commitment is also limited by ViaSat's level of accounts receivable and inventory. The revolving loan facility's maturity date is September 30, 2003 and is collateralized by cash, accounts receivable and inventory of ViaSat.

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On December 5, 2001 Astrolink International LLC terminated for convenience two of our ground segment contracts. At the time of termination, Astrolink's investors had announced that they would not invest further in the Astrolink program. These two contracts relate to the development and production of subscriber terminals and service provider gateways for the Astrolink satellite system. Astrolink contracts accounted for approximately 10% of our revenues in fiscal year 2002. We have not recorded any revenue related to the Astrolink contracts in fiscal year 2003.

On January 19, 2003 we reached a settlement with Astrolink with respect to contractual termination payments. We received a cash payment of \$6.5 million. Depending on the implementation of the Astrolink business plan, we may also receive additional consideration in the form of cash, a consulting contract and satellite airtime from the new Astrolink business providing aggregate additional value of approximately \$4.5 million under specified circumstances or may receive certain non-cash consideration in the form of capital equipment under other circumstances. The assets at risk prior to the Astrolink settlement were accounts receivable due from Astrolink in the amount of approximately \$6.3 million, inventory specific to Astrolink of \$0.4 million and \$2.5 million in prepaid airtime on Astrolink satellites. The value of the future consideration from the settlement will depend on the new Astrolink business. Due to the contingent nature and uncertainty of the value of the additional consideration to be received by us pursuant to the settlement, we have reduced our assets related to Astrolink to \$6.3 million of accounts receivable and \$0.2 million of inventory as of December 31, 2002. The cash received from Astrolink in the amount of \$6.5 million will be applied against these assets in our fourth quarter of fiscal 2003. After applying the cash received of \$6.5 million, we will have reduced our assets related to Astrolink to zero. As a result, we have taken a charge through cost of goods sold for the \$2.5 million of prepaid airtime and \$0.2 million of inventory in the quarter ended December 31, 2002.

Astrolink Related Assets (in millions)	Accounts Receivable	Prepaid Airtime	Inventory	Total
Balance at September 30, 2002	\$6.3	\$2.5	\$0.4	\$9.2
Recognized as expense during the quarter ended December 31, 2002	-0-	\$2.5	\$0.2	\$2.7
	—	—	—	—
Balance at December 31, 2002	\$6.3	-0-	\$0.2	\$6.5
	—	—	—	—

In September 2001, we filed a universal shelf registration statement with the Securities and Exchange Commission for the future sale of up to \$75 million of debt securities, common stock, preferred stock, depositary shares, and warrants. The securities may be offered from time to time, separately or together, directly by us or through underwriters at amounts, prices, interest rates and other terms to be determined at the time of the offering. We currently intend to use the net proceeds from the sale of the securities under the shelf registration statement for general corporate purposes, including acquisitions, capital expenditures, working capital and the repayment or refinancing of our debt. In January 2002, we issued 2,000,000 shares of our common stock under this registration statement for proceeds, net of offering costs, of approximately \$27.1 million. We used the net proceeds from the sale of the common stock for general corporate purposes, which included funding research, increasing our working capital, reducing indebtedness and capital expenditures.

Our future capital requirements will depend upon many factors, including the expansion of our research and development and marketing efforts and the nature and timing of orders. Additionally, we will continue to evaluate possible acquisitions of, or investments in complementary businesses, products and technologies which may require the use of cash. We believe that our current cash balances and net cash expected to be provided by operating activities will be sufficient to meet our operating requirements for at least the next 12 months. However, we may sell additional equity or debt securities or obtain credit facilities to further enhance our liquidity position. The sale of additional securities could result in additional dilution of our stockholders. We invest our cash in excess of current operating requirements in short-term, interest-bearing, investment-grade securities.

The following table sets forth a summary of our obligations under operating leases, capital leases, notes payable and irrevocable letters of credit for the periods indicated (in thousands):

	As of December 31, 2002 Total	For the balance of fiscal year ending March 31, 2003	For the fiscal years ending March 31,		
			2004-2006	2007-2008	After 2008
Operating leases	\$19,593	\$ 1,554	\$8,614	\$5,141	\$4,284
Capital leases	245	104	141	—	—
Lines of credit	14,350	14,350	—	—	—
Standby letters of credit	1,520	1,323	197	—	—
	—	—	—	—	—
Total	\$35,708	\$17,331	\$8,952	\$5,141	\$4,284
	—	—	—	—	—

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We have a services agreement with Immeon to perform services for the operation of Immeon. We maintain an obligation to provide service to Immeon customers through the end of its customer contracts in 2004.

We are currently a party to various government and commercial contracts which require us to meet performance covenants and project milestones. Under the terms of these contracts, failure by us to meet their performance covenants and milestones permit the other party to terminate the contract and, under specific circumstances, recover liquidated damages or other penalties. We are currently not in compliance (or in the past were not in compliance) with the performance or milestone requirements of some of these contracts. Generally, our customers have not elected to terminate such contracts or seek liquidated damages from us; therefore, we have not accrued for any potential liquidated damages or penalties.

Factors That May Affect Future Performance

You should consider each of the following factors as well as the other information in this Quarterly Report in evaluating our business and prospects. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impair our business operations. If any of the following risks actually occur, our business and financial results could be harmed. In that case the trading price of our common stock could decline. You should also refer to the other information set forth in this Quarterly Report, including our financial statements and the related notes.

Our Success Depends on Our Ability to Grow Our Commercial Business

To date, our historical growth has been driven largely by our success in meeting the needs for advanced communications products for the U.S. military. We have been increasing our focus in recent years on offering satellite-based communications products to address commercial market needs. We cannot assure you that we will be able to successfully continue to grow our commercial satellite communications business or that we will be able to compete effectively in the commercial market in the future. If we are unable to successfully continue to grow our commercial business or compete effectively in the commercial market in the future, it could materially harm our business and impair the value of our common stock.

If Commercial Wireless Communications Markets Fail to Grow as Anticipated, Our Business Could Be Materially Harmed

A number of the commercial markets for our products in the wireless communications area, including our DAMA and broadband products, have only recently developed. Because these markets are relatively new, it is difficult to predict the rate at which these markets will grow, if at all. If the markets for commercial wireless communications products fail to grow, or grow more slowly than anticipated, our business could be materially harmed. Conversely, to the extent that growth in these markets results in capacity limitations in the wireless communications area, it could materially harm our business and impair the value of our common stock.

Our Reliance on U.S. Government Contracts Exposes Us To Significant Risks

Approximately 38% of our revenues in fiscal year 2001, 32% of our revenues in fiscal year 2002 and 46% of our revenues for the first nine months of fiscal year 2003 were derived from U.S. government applications. Although the recent growth of our commercial business has substantially reduced our dependence on U.S. government business, this business will continue to represent a significant portion of our revenues for the foreseeable future. U.S. government business exposes us to various risks, including:

- unexpected contract or project terminations or suspensions,
- unpredictable order placements, reductions or cancellations,
- reductions in government funds available for our projects due to government policy changes, budget cuts and contract adjustments,
- the ability of competitors to protest contractual awards,
- penalties arising from post-award contract audits,
- cost audits in which the value of our contracts may be reduced,

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- higher-than-expected final costs, particularly relating to software and hardware development, for work performed under contracts where we commit to specified deliveries for a fixed price,
- limited profitability from cost-reimbursement contracts under which the amount of profit is limited to a specified amount, and
- unpredictable cash collections of unbilled receivables that may be subject to acceptance of contract deliverables by the customer and contract close-out procedures, including government approval of final indirect rates.

In addition, substantially all of our U.S. government backlog scheduled for delivery can be terminated at the convenience of the U.S. government because our contracts with the U.S. government typically provide that orders may be terminated with limited or no penalties. If we are unable to address any of the risks described above, it could materially harm our business and impair the value of our common stock.

We Face Risks from the Domestic and Global Slowdown

The global economy is in the midst of a slowdown that has had significant effects on markets that we serve, particularly satellite communications equipment manufacturers and network operators. In addition, the September 11th terrorist attacks have significantly and negatively affected general economic conditions. This downturn has had a negative effect on our revenues. We cannot predict the depth or duration of this downturn, and if it grows more severe or continues for a long period of time, including as result of future attacks, responses to such attacks or other significant events, our ability to increase or maintain our revenues and operating results may be impaired. In addition, because we intend to continue to make significant investments in research and development during this downturn, any decline in the rate of growth of our revenues will have a significant adverse impact on our operating results.

Further, because current domestic and global economic conditions and economies are extremely uncertain, it is difficult to estimate the growth in various parts of the economy, including the markets in which we participate. Because parts of our budgeting and forecasting are reliant on estimates of growth in the markets we serve, the current economic uncertainty renders estimates of future revenues and expenditures even more difficult than usual to formulate. The future direction of the overall domestic and global economies could have a significant impact on our overall financial performance and impair the value of our common stock.

If Our Customers Experience Financial or Other Difficulties, Our Business Could Be Materially Harmed

A number of our commercial customers have in the past, and may in the future experience financial difficulties. Many of our commercial customers face risks that are similar to those we encounter, including risks associated with market growth, acceptance by the market of products and services, and the ability to obtain sufficient capital. We cannot assure you that our customers will be successful in managing these risks. If our customers do not successfully manage these types of risks, it could impair our ability to generate revenues, collect amounts due from these customers and materially harm our business.

Major communications infrastructure programs, such as proposed satellite communications systems, are important sources of our current and planned future revenues. We also participate in a number of defense programs. Programs of these types cannot proceed unless the customer can raise adequate funds, from either governmental or private sources. As a result, our expected revenues can be adversely affected by political developments or by conditions in private capital markets. They can also be adversely affected if private capital markets are not receptive to a customer's proposed business plans. If our customers are unable to raise adequate funds it could materially harm our business and impair the value of our common stock.

Two commercial customers on whom we are relying in part for future revenue growth face challenges that could result in their failure to deploy planned systems in accordance with current schedules. We believe that Wildblue Communications, with which we have a contract for the development of satellite modems and satellite modem termination systems for a planned Ka-band broadband Internet platform, faces substantial challenges with respect to the development and launch of its system. Similarly, Connexion by Boeing, which has awarded us a contract to design and manufacture receive-and-transmit subsystems and other components for a satellite in-flight data network, faces substantial challenges with respect to the development of its system. Several airlines that had initially partnered with Boeing on the Connexion project publicly announced withdrawal from the project during fiscal year 2002. Any failure on the part of either Wildblue Communications or Boeing to deploy successfully its intended system as a result of lack of funding or other difficulties could materially harm our business and impair the value of our common stock.

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A Significant Portion of Our Revenues is Derived from a Few of Our Contracts

A small number of our contracts account for a significant percentage of our revenues. Historically, our largest revenue producing contracts have been U.S. government contracts related to our UHF DAMA technology, which generated approximately 9% of our revenues in fiscal year 2001, 10% of our revenues in fiscal year 2002 and 15% of our revenues for the first nine months of fiscal year 2003. Our five largest contracts generated approximately 36% of our revenues in fiscal year 2001 and 33% of our revenues in fiscal year 2002. The failure of these customers to place additional orders or to maintain these contracts with us for any reason, including any downturn in their business or financial condition, or our inability to renew or replace our contracts with these customers when they expire could materially harm our business and impair the value of our common stock.

We Depend Heavily on the VSAT Market

We derived approximately 29% of our revenues in fiscal year 2001, 31% of our revenues in fiscal year 2002 and 34% of our revenues for the first nine months of fiscal year 2003 from sales of VSAT communications networks. While the market for VSAT communications networks and services has grown steadily since its inception in the mid-1980s, this market may not continue to grow or VSAT technology may be replaced by an alternative technology. A significant decline in this market or the replacement of VSAT technology by an alternative technology could materially harm our business and impair the value of our common stock.

Our Credit Facility Contains Restrictions that Could Limit Our Ability to Implement Our Business Plan

The restrictions contained in our line of credit may limit our ability to implement our business plan, finance future operations, respond to changing business and economic conditions, secure additional financing, and engage in opportunistic transactions, such as strategic acquisitions. In addition, if we fail to meet the covenants contained in our line of credit, repayment of our outstanding indebtedness may be accelerated. This indebtedness, among other things, restricts our ability to do the following:

- incur additional indebtedness,
- create liens,
- make certain payments, including payments of dividends in respect of capital stock,
- consolidate, merge and sell assets,
- engage in certain transactions with affiliates, and
- make acquisitions.

In addition, such indebtedness requires us to maintain certain ratios, including:

- debt to EBITDA (earnings before interest, taxes, depreciation and amortization) and
- quick ratio (sum of cash, accounts receivable and marketable securities to current liabilities),

and to satisfy certain tests, including tests relating to:

- limits on capital expenditures,
- minimum quarterly EBITDA, and
- minimum tangible net worth.

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We cannot assure you that we will be able to comply with our financial covenants or that any financial covenant violations will be waived. Any violation that is not waived could result in an event of default, permitting the lenders to suspend commitments to make any advance, to declare notes and interest thereon due and payable, and to require any outstanding letters of credit to be collateralized by an interest bearing cash account, any or all of which could have a material adverse effect on our business, financial condition and results of operations. In addition, if we fail to comply with our financial covenants, we may need additional financing in order to service or extinguish our indebtedness. We may not be able to obtain financing or refinancing on terms that are acceptable to us, if at all.

Our Success Depends on the Development of New Satellite and Other Wireless Communications Products and Our Ability to Gain Acceptance of These Products

The wireless communications market in general, and the satellite communications market in particular, are subject to rapid technological change, frequent new and enhanced product introductions, product obsolescence and changes in user requirements. Our ability to compete successfully in these markets depends on our success in applying our expertise and technology to existing and emerging satellite and other wireless communications markets. Our ability to compete in these markets also depends in large part on our ability to successfully develop, introduce and sell new products and enhancements on a timely and cost-effective basis that respond to ever-changing customer requirements. Our ability to successfully introduce new products depends on several factors, including:

- successful integration of various elements of our complex technologies and system architectures,
- timely completion and introduction of new product designs,
- achievement of acceptable product costs,
- timely and efficient implementation of our manufacturing and assembly processes and cost reduction efforts,
- establishment of close working relationships with major customers for the design of their new wireless communications systems incorporating our products,
- development of competitive products by competitors,
- marketing and pricing strategies of our competitors with respect to competitive products, and
- market acceptance of our new products.

We cannot assure you that our product development efforts for communications products will be successful or that any new products that we develop, including ArcLight, Surfbeam and LinkStar, will achieve market acceptance. We may experience difficulties that could delay or prevent us from successfully selecting, developing, manufacturing or marketing new products or enhancements. In addition, defects may be found in our products after we begin deliveries, which could result in the delay or loss of market acceptance. If we are unable to design, manufacture, integrate and market profitable new products for existing or emerging communications markets, it could materially harm our business and impair the value of our common stock.

A Decrease in the Selling Prices of Our Products Could Materially Harm Our Business

The average selling prices of wireless communications products historically decline over product life cycles. In particular, we expect the average selling prices of our products to decline as a result of competitive pricing pressures and customers who negotiate discounts based on large unit volumes. We also expect that competition in this industry will continue to increase. To offset these price decreases, we intend to rely primarily on obtaining yield improvements and corresponding cost reductions in the manufacturing process of existing products and on the introduction of new products with advanced features that can be sold at higher prices. However, we cannot assure you that we will be able to obtain any yield improvements or cost reductions or introduce any new products in the future. To the extent that we do not reduce costs or introduce new products in a timely manner, or our new products do not achieve market acceptance, it could materially harm our business and impair the value of our common stock.

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Our Development Contracts May Be Difficult for Us to Comply With and May Expose Us to Third-Party Claims for Damages

We are often party to government and commercial contracts that involve the development of new products. We derived approximately 48% of our revenues in fiscal year 2001 and 38% of our revenues in fiscal year 2002 from these development contracts. These contracts typically contain strict performance obligations and project milestones. We cannot assure you that we will comply with these performance obligations or meet these project milestones. If we are unable to comply with these performance obligations or meet these milestones, our customers may terminate these contracts and, under some circumstances, recover damages or other penalties from us. We are not currently, nor have we always been, in compliance with all outstanding performance obligations and project milestones. In the past, when we have not complied with the performance obligations or project milestones in a contract, generally, the other party has not elected to terminate the contract or seek damages from us. However, we cannot assure you that in the future other parties will not terminate their contracts or seek damages from us. If other parties elect to terminate their contracts or seek damages from us, it could materially harm our business and impair the value of our common stock.

We May Experience Losses from Our Fixed-Price Contracts

Approximately 94% of our revenues in fiscal year 2001, 97% of our revenues in fiscal year 2002 and 96% of our revenues for the first nine months of fiscal year 2003 were derived from contracts with fixed prices. We assume greater financial risk on fixed-price contracts than on other types of contracts because if we do not anticipate technical problems, estimate costs accurately or control costs during performance of a fixed-price contract, it may significantly reduce our net profit or cause a loss on the contract. We believe that a high percentage of our contracts will be at fixed prices in the future. Although we attempt to accurately estimate costs for fixed-price contracts, we cannot assure you that our estimates will be adequate or that substantial losses on fixed-price contracts will not occur in the future. If we are unable to address any of the risks described above, it could materially harm our business and impair the value of our common stock.

We Expect to Increase Our Research and Development Costs, Which Could Significantly Reduce Our Profitability

Our future growth depends on penetrating new markets, adapting existing satellite communications products to new applications, and introducing new communications products that achieve market acceptance. Accordingly, we are actively applying our communications expertise to design and develop new hardware and software products and enhance existing products. We expended \$6.2 million in fiscal year 2001, \$9.4 million in fiscal year 2002 and \$11.7 million for the first nine months of fiscal year 2003 in research and development activities. We expect to continue to spend increased amounts relative to historical levels on research and development in the near future. The increased amounts in the near future will be due in large part to the higher levels of research and development expenses associated with the product development activities of our subsidiary U.S. Monolithics. Because we account for research and development as an operating expense, these expenditures will adversely affect our earnings in the near future. Our research and development program may not produce successful results, which could materially harm our business and impair the value of our common stock.

Our Reliance on a Limited Number of Third Parties to Manufacture and Supply Our Products Exposes Us to Various Risks

Our internal manufacturing capacity is limited and we do not intend to expand that capability in the foreseeable future. We rely on a limited number of contract manufacturers to produce our products and expect to rely increasingly on these manufacturers in the future. In addition, some components, subassemblies and services necessary for the manufacture of our products are obtained from a sole supplier or a limited group of suppliers. In particular, Texas Instruments is a sole source supplier of digital signal processing chips, which are critical components in substantially all of our products.

Our reliance on contract manufacturers and on sole suppliers or a limited group of suppliers involves several risks. We may not be able to obtain an adequate supply of required components, and our control over the price, timely delivery, reliability and quality of finished products may be reduced. The process of manufacturing our products and some of our components and subassemblies is extremely complex. We have in the past experienced and may in the future experience delays in the delivery of and quality problems with products and components and subassemblies from vendors. Some of the suppliers that we rely upon have relatively limited financial and other resources. If we are not able to obtain timely deliveries of components and subassemblies of acceptable quality or if we are otherwise required to seek alternative sources of supply, or to manufacture our finished products or components and subassemblies internally, it could delay or prevent us from delivering our systems promptly and at high quality. This failure could damage relationships with current or prospective customers, which, in turn, could materially harm our business and impair the value of our common stock.

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Our Ability to Protect Our Proprietary Technology is Limited and Infringement Claims Against Us Could Restrict Our Ability to Conduct Business

Our success depends significantly on our ability to protect our proprietary rights to the technologies we use in our products and services. If we are unable to protect our proprietary rights adequately, our competitors could use the intellectual property that we have developed to enhance their own products and services, which could materially harm our business and impair the value of our common stock. We currently rely on a combination of patents, trade secret laws, copyrights, trademarks, service marks and contractual rights to protect our intellectual property. We cannot assure you that the steps we have taken to protect our proprietary rights will be adequate. Also, we cannot assure you that our issued patents will remain valid or that any pending patent applications will be issued. Additionally, the laws of some foreign countries in which our products are or may be sold do not protect our intellectual property rights to the same extent as do the laws of the United States.

Litigation may often be necessary to protect our intellectual property rights and trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement or invalidity. We believe that infringement, invalidity, right to use or ownership claims by third parties or claims for indemnification resulting from infringement claims will likely be asserted against us in the future. If any claims or actions are asserted against us, we may seek to obtain a license under a third party's intellectual property rights. We cannot assure you, however, that a license will be available under reasonable terms or at all. Litigation of intellectual property claims could be extremely expensive and time consuming, which could materially harm our business, regardless of the outcome of the litigation. If our products are found to infringe upon the rights of third parties, we may be forced to incur substantial costs to develop alternative products. We cannot assure you that we would be able to develop alternative products or that if these alternative products were developed, they would perform as required or be accepted in the applicable markets. If we are unable to address any of the risks described above relating to the protection of our proprietary rights, it could materially harm our business and impair the value of our common stock.

The Markets We Serve Are Highly Competitive and Our Competitors May Have Greater Resources Than Us

The wireless communications industry is highly competitive and competition is increasing. In addition, because our industry is evolving and characterized by rapid technological change, it is difficult for us to predict whether, when and who may introduce new competing technologies, products or services into our markets. Currently, we face substantial competition from domestic and international wireless and ground-based communications service providers in the commercial and government industries. Many of our competitors and potential competitors have significant competitive advantages, including strong customer relationships, more experience with regulatory compliance, greater financial and management resources, and control over central communications networks. In addition, some of our customers continuously evaluate whether to develop and manufacture their own products and could elect to compete with us at any time. Increased competition from any of these or other entities could materially harm our business and impair the value of our common stock.

We Depend on a Limited Number of Key Employees Who Would Be Difficult to Replace

We depend on a limited number of key technical, marketing and management personnel to manage and operate our business. In particular, we believe that our success depends to a significant degree on our ability to attract and retain highly skilled personnel, including our President and Chief Executive Officer, Mark D. Dankberg, and those highly skilled design, process and test engineers involved in the manufacture of existing products and the development of new products and processes. The competition for these types of personnel is intense, and the loss of key employees could materially harm our business and impair the value of our common stock. We do not have employment agreements with any of our officers.

We May Engage in Strategic Transactions That Could Result in Significant Charges and Management Disruption and Fail to Enhance Stockholder Value

From time to time, we consider strategic transactions and alternatives with the goal of maximizing stockholder value, such as the spin-off of TrellisWare Technologies in August 2000 and the formation of the Immeon Networks joint venture in January 2001 with Loral Skynet, a division of Loral Spacecom. These strategic transactions entail a high degree of risk.

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We will continue to evaluate potential strategic transactions and alternatives that we believe may enhance stockholder value. These potential future transactions may include a variety of different business arrangements, including acquisitions, spin-offs, strategic partnerships, joint ventures, restructurings, divestitures, business combinations and investments. Although our goal is to maximize stockholder value, such transactions may have unexpected results that adversely affect our business and the trading price of our common stock. Any such transaction may require us to incur non-recurring or other charges and may pose significant integration challenges and/or management and business disruptions, any of which could harm our operating results and business prospects.

Any Failure to Successfully Integrate Strategic Acquisitions Could Adversely Affect Our Business

In order to position ourselves to take advantage of growth opportunities, we have made, and may continue to make, strategic acquisitions that involve significant risks and uncertainties. These risks and uncertainties include:

- the difficulty in integrating newly-acquired businesses and operations in an efficient and effective manner,
- the challenges in achieving strategic objectives, cost savings and other benefits expected from acquisitions,
- the risk that our markets do not evolve as anticipated and that the technologies acquired do not prove to be those needed to be successful in those markets,
- the potential loss of key employees of the acquired businesses,
- the risk of diverting the attention of senior management from the operations of our business
- the risks of entering markets in which we have less experience, and
- the risks of potential disputes concerning indemnities and other obligations that could result in substantial costs and further divert management's attention and resources.

Any failure to successfully integrate strategic acquisitions could harm our business and impair the value of our common stock. Furthermore, to complete future acquisitions we may issue equity securities, incur debt, assume contingent liabilities or have amortization expenses and write-downs of acquired assets, which could cause our earnings per share to decline.

Because We Conduct Business Internationally, We Face Additional Risks Related to Global Political and Economic Conditions and Currency Fluctuations

Approximately 22% of our revenues in fiscal year 2001, 28% of our revenues in fiscal year 2002 and 27% of our revenues for the first nine months of fiscal year 2003 were derived from international sales. We anticipate that international sales will account for an increasing percentage of our revenues over the next several years. Many of these international sales may be denominated in foreign currencies. Because we do not currently engage in nor do we currently anticipate engaging in foreign currency hedging transactions, a decrease in the value of foreign currencies relative to the U.S. dollar could result in losses from transactions denominated in foreign currencies. This decrease in value could also make our products less price-competitive.

There are additional risks in conducting business internationally, including:

- unexpected changes in regulatory requirements,
- increased cost of localizing systems in foreign countries,
- increased sales and marketing and research and development expenses,
- availability of suitable export financing,
- timing and availability of export licenses,
- tariffs and other trade barriers,

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- political and economic instability,
- challenges in staffing and managing foreign operations,
- difficulties in managing distributors,
- potentially adverse tax consequences,
- potential difficulty in making adequate payment arrangements, and
- potential difficulty in collecting accounts receivable.

In addition, some of our customer purchase agreements are governed by foreign laws, which may differ significantly from U.S. laws. We may be limited in our ability to enforce our rights under these agreements and to collect damages, if awarded. If we are unable to address any of the risks described above, it could materially harm our business and impair the value of our common stock.

Adverse Regulatory Changes Could Impair Our Ability to Sell Products

Our products are incorporated into wireless communications systems that must comply with various government regulations, including those of the Federal Communications Commission (FCC). In addition, we operate and provide services to customers through the use of several satellite earth hub stations that are licensed by the FCC. Regulatory changes, including changes in the allocation of available frequency spectrum and in the military standards and specifications that define the current satellite networking environment, could materially harm our business by (1) restricting development efforts by us and our customers, (2) making our current products less attractive or obsolete, or (3) increasing the opportunity for additional competition. Changes in, or our failure to comply with, applicable regulations could materially harm our business and impair the value of our common stock. In addition, the increasing demand for wireless communications has exerted pressure on regulatory bodies worldwide to adopt new standards for these products and services, generally following extensive investigation of and deliberation over competing technologies. The delays inherent in this government approval process have caused and may continue to cause our customers to cancel, postpone or reschedule their installation of communications systems. This, in turn, may have a material adverse effect on our sales of products to our customers.

We Face Potential Product Liability Claims

We may be exposed to legal claims relating to the products we sell or the services we provide. Our agreements with our customers generally contain terms designed to limit our exposure to potential product liability claims. We also maintain a product liability insurance policy for our business. However, our insurance may not cover all relevant claims or may not provide sufficient coverage. If our insurance coverage does not cover all costs resulting from future product liability claims, it could materially harm our business and impair the value of our common stock.

Our Operating Results Have Varied Significantly from Quarter to Quarter in the Past and, if They Continue to do so, the Market Price of Our Common Stock Could Be Impaired

Our operating results have varied significantly from quarter to quarter in the past and may continue to do so in the future. The factors that cause our quarter-to-quarter operating results to be unpredictable include:

- a complex and lengthy procurement process for most of our customers or potential customers,
- changes in the levels of research and development spending, including the effects of associated tax credits
- the difficulty in estimating costs over the life of a contract, which may require adjustment in future periods,
- the timing, quantity and mix of products and services sold,
- price discounts given to some customers,

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- market acceptance and the timing of availability of our new products,
- the timing of customer payments for significant contracts,
- one time charges to operating income arising from items such as acquisition expenses and write-offs of assets related to customer non-payments,
- the failure to receive an expected order or a deferral of an order to a later period, and
- general economic and political conditions.

As a result, we believe that period-to-period comparisons of our operating results are not necessarily meaningful and you should not rely upon them as indicators of future performance. If we are unable to address any of the risks described above, it could materially impair the value of our common stock. In addition, it is likely that in one or more future quarters our results may fall below the expectations of analysts and investors. In this event, the trading price of our common stock would likely decrease.

Our Executive Officers and Directors Own a Large Percentage of Our Common Stock and Exert Significant Influence Over Matters Requiring Stockholder Approval

As of February 7, 2003, our executive officers and directors and their affiliates beneficially owned an aggregate of approximately 21% of our common stock. Accordingly, these stockholders may be able to significantly influence the outcome of corporate actions requiring stockholder approval, such as mergers and acquisitions. These stockholders may exercise this ability in a manner that advances their best interests and not necessarily those of other stockholders. This ownership interest could also have the effect of delaying or preventing a change in control.

We Have Implemented Anti-Takeover Provisions That Could Prevent an Acquisition of Our Business at a Premium Price

Some of the provisions of our certificate of incorporation and bylaws could discourage, delay or prevent an acquisition of our business at a premium price. These provisions:

- permit the board of directors to increase its own size and fill the resulting vacancies,
- provide for a board comprised of three classes of directors with each class serving a staggered three-year term,
- authorize the issuance of preferred stock in one or more series, and
- prohibit stockholder action by written consent.

In addition, Section 203 of the Delaware General Corporation Law imposes restrictions on mergers and other business combinations between us and any holder of 15% or more of our common stock.

Compliance With Changing Regulation of Corporate Governance and Public Disclosure May Result in Additional Expenses

Changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new Securities and Exchange Commission regulations and Nasdaq Stock Market rules, are creating uncertainty for companies such as ours. We are committed to maintaining high standards of corporate governance and public disclosure. As a result, we intend to invest reasonably necessary resources to comply with evolving standards, and this investment may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities, which could harm our operating results and business prospects.

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Our Forward-looking Statements are Speculative and May Prove to be Wrong

Some of the information in this Quarterly Report involves forward-looking statements. These forward-looking statements include, but are not limited to, statements about our plans, objectives, expectations and intentions and other statements contained in this Quarterly Report that are not historical facts. When used in this Quarterly Report, the words “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” “estimates” and similar expressions are generally intended to identify forward-looking statements. Because these forward-looking statements involve risks and uncertainties, there are important factors, including the factors discussed in this “Factors that May Affect Future Performance” section of the Quarterly Report, which could cause actual results to differ materially from those expressed or implied by these forward-looking statements. We undertake no obligation to update publicly or revise any forward-looking statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Our financial instruments consist of cash and cash equivalents, short-term investments, trade accounts receivable, accounts payable, and short-term obligations including the revolving line of credit. We consider investments in highly liquid instruments purchased with a remaining maturity of 90 days or less at the date of purchase to be cash equivalents. Our exposure to market risk for changes in interest rates relates primarily to short-term investments and short-term obligations. As a result, we do not expect fluctuations in interest rates to have a material impact on the fair value of these securities.

Item 4. Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Within 90 days prior to the date of this Quarterly Report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer, Chief Financial Officer and Disclosure Committee of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer, Chief Financial Officer and Disclosure Committee concluded that our disclosure controls and procedures were effective.

There have been no significant changes in our internal controls or in other factors that could significantly affect the internal controls subsequent to the date we completed our evaluation.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

On October 23, 2002, ViaSat sent Scientific-Atlanta a claim for indemnification under the terms of the asset purchase agreement related to the acquisition of Scientific-Atlanta's satellite networks business in April 2000. On November 14, 2002, Scientific-Atlanta filed a complaint (United States District Court, Northern District of Georgia, Atlanta Division (Case No. 1 02-CV-3081)) for declaratory judgment seeking to resolve ViaSat's claim for indemnification through litigation. In response to Scientific-Atlanta's complaint, on January 15, 2003, ViaSat filed a formal claim against Scientific-Atlanta for, among other things, fraud, breach of warranty, contractual and equitable indemnification, and breach of the duty of good faith and fair dealing. The parties are currently engaged in discovery. ViaSat intends to vigorously prosecute its claims.

Item 6. Exhibits and Reports on Form 8-K

- (a) Exhibit 10.1 — Amended and Restated Revolving Loan Agreement executed February 10, 2003 by and among Union Bank of California, Comerica Bank — California and ViaSat, Inc. (1)
- (b) On October 31, 2002, we filed a current report on Form 8-K, reporting under Item 5 that we had signed amendments to our Revolving/Term Loan Agreement, and attaching such amendments.
- (1) Certain portions of this exhibit have been requested to be redacted pursuant to a request for confidential treatment filed by ViaSat, Inc.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

VIASAT, INC.

February 13, 2003

/s/ MARK D. DANKBERG

Mark D. Dankberg
Chairman of the Board, President and Chief Executive Officer
(Principal Executive Officer)

/s/ RONALD G. WANGERIN

Ronald G. Wangerin
Vice President, Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATIONS

I, Mark D. Dankberg, certify that:

1. I have reviewed this quarterly report on Form 10-Q of ViaSat, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 13, 2003

/s/ MARK D. DANKBERG

Mark D. Dankberg
Chief Executive Officer

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I, Ronald G. Wangerin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of ViaSat, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 13, 2003

/s/ RONALD G. WANGERIN

Ronald G. Wangerin
Chief Financial Officer

*** CERTAIN CONFIDENTIAL INFORMATION HAS BEEN OMITTED AND FILED WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

AMENDED AND RESTATED REVOLVING LOAN AGREEMENT

Dated as of December 31, 2002

among

VIASAT, INC.

THE LENDERS HEREIN NAMED

UNION BANK OF CALIFORNIA, N.A.,
as Administrative Agent

and

COMERICA BANK - CALIFORNIA,
as Collateral Agent

AMENDED AND RESTATED REVOLVING LOAN AGREEMENT

Dated as of December 31, 2002

THIS AMENDED AND RESTATED REVOLVING LOAN AGREEMENT (this "Agreement") is entered into by and among ViaSat, Inc., a Delaware corporation ("Borrower"), each lender whose name is set forth on the signature pages of this Agreement and each lender which may hereafter become a party to this Agreement pursuant to Section 11.8 (collectively, the "Lenders" and individually, a "Lender"), Union Bank of California, N.A., as Administrative Agent, and Comerica Bank-California, as Collateral Agent, with reference to the following facts:

RECITALS

A. Borrower, the Lenders and the Administrative Agent are parties to the Revolving/Term Loan Agreement dated as of June 21, 2001, as amended (collectively, the "Existing Loan Agreement"), pursuant to which the Lenders provided Borrower with various credit facilities.

B. Borrower, the Lenders, the Administrative Agent and the Collateral Agent wish to enter into this Agreement, which shall amend, restate, replace and supercede (but shall not constitute a novation of) the Existing Loan Agreement and which hereinafter shall govern the credit facilities provided by the Lenders to Borrower.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

Article 1.

DEFINITIONS AND ACCOUNTING TERMS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the respective meanings set forth below:

"Account Debtor" means any Person who is or may become obligated on, under or on account of any Account.

"Accounts" means all "accounts," as such term is defined in the UCC, now owned or hereafter acquired by any Person, including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by "chattel paper," "documents" or "instruments" (as such terms are defined in the UCC)), whether arising out of goods sold or services rendered by it or from any other transaction (including any such obligations that may be characterized as an account or contract right under the UCC), (b) all purchase orders or receipts for goods or services, (c) all rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all monies due or to become due to such Person under all purchase orders and contracts for the sale of goods or the performance of services or both by such Person or in connection with any other

transaction (whether or not yet earned by performance on the part of such Person) now or hereafter in existence, including the right to receive the proceeds of said purchase orders and contracts, and (e) all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

"Accounts Receivable Aging Report" has the meaning specified in Section 7.1(e).

"Accounts Receivable Reconciliation Report" has the meaning specified in Section 7.1(e).

"Acquisition" means any transaction, or any series of related transactions, consummated after the Closing Date, by which Borrower and/or any of its Subsidiaries directly or indirectly (a) acquires any ongoing business or all or substantially all of the assets of any Person engaged in any ongoing business, whether through a purchase of assets, a merger or otherwise, (b) acquires control of securities of a Person engaged in an ongoing business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body or (c) acquires control of more than 50% of the ownership interest in any partnership, joint venture, limited liability company, business trust or other Person engaged in an ongoing business that is not managed by a board of directors or other governing body.

"Administrative Agent" means Union Bank of California, N.A. when acting in its capacity as the Administrative Agent under any of the Loan Documents, or any successor Administrative Agent.

"Administrative Agent's Office" means the Administrative Agent's address as set forth on the signature pages of this Agreement, or such other address as the Administrative Agent hereafter may designate by written notice to Borrower and the Lenders.

"Advance" means any advance made or to be made by any Lender to Borrower as provided in Article 2, and includes each Alternate Base Rate Advance and Eurodollar Rate Advance.

"Affiliate" means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (and the correlative terms, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); provided that, in any event, any Person that owns, directly or indirectly, 10% or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation that has more than 100 record holders of such securities, or 10% or more of the partnership or other ownership interests of any other

Person that has more than 100 record holders of such interests, will be deemed to be an Affiliate of such corporation, partnership or other Person.

"Agreement" means this Amended and Restated Revolving Loan Agreement, either as originally executed or as it may from time to time be supplemented, modified, amended, restated or extended.

"Aggregate Effective Amount" means, as of any date of determination and with respect to all Letters of Credit then outstanding, the sum of (a) the aggregate effective face amounts of all such Letters of Credit not then paid by the Issuing Lender plus (b) the aggregate amounts paid by the Issuing Lender under such Letters of Credit not then reimbursed to the Issuing Lender by Borrower pursuant to Section 2.4(d) and not the subject of Advances made pursuant to Section 2.4(e).

"Arranger" means UBOC.

"Bank Products" means any one or more of the following types of services or facilities extended to Borrower by any Lender or any Affiliate of a Lender in reliance on such Lender's agreement to indemnify such Affiliate: (i) credit cards; (ii) automated clearing house transfer or funds; (iii) overdrafts; (iv) interest rate swap transactions; and (v) foreign exchange contracts.

"Banking Day" means any Monday, Tuesday, Wednesday, Thursday or Friday, other than a day on which banks are authorized or required to be closed in California or New York.

"Base Rate" means, as of any date of determination, the rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the Prime Rate in effect on such date.

"Base Rate Advance" means an Advance under the Revolving Commitment made hereunder and specified to be a Base Rate Advance in accordance with Article 2.

"Base Rate Loan" means a Revolving Loan made hereunder and specified to be a Base Rate Loan in accordance with Article 2.

"Borrowing Base" means, as of any date of determination, an amount determined by the Administrative Agent, in its reasonable discretion, based on the most recent Borrowing Base Certificate delivered by Borrower to the Administrative Agent pursuant to Section 7.3, to be equal to the sum of (a) 80% of the balance due on Eligible Accounts and (b) the lesser of (i) 20% of the book value of the Eligible Inventory, determined on a first-in, first-out basis, or (ii) \$5,000,000.

"Borrowing Base Certificate" means a certificate in the form of Exhibit A, properly completed and signed by a Senior Officer of Borrower.

"Capital Expenditure" means any expenditure by Borrower or any of its Subsidiaries for or related to fixed assets or purchased intangibles that is treated as a

capital expenditure under GAAP, including any amount which is required to be treated as an asset subject to a Capital Lease Obligation. The amount of Capital Expenditures in respect of fixed assets purchased or constructed by Borrower or any of its Subsidiaries in any fiscal period shall be net of (a) any net sales proceeds received during such fiscal period by Borrower or such Subsidiary for fixed assets sold by Borrower or such Subsidiary and (b) any casualty insurance proceeds received during such fiscal period by Borrower or such Subsidiary for casualties to fixed assets and applied to the repair or replacement thereof.

"Capital Lease Obligations" means all monetary obligations of a Person under any leasing or similar arrangement which, in accordance with GAAP, is classified as a capital lease.

"Cash" means, when used in connection with any Person, all monetary and non-monetary items owned by that Person that are treated as cash in accordance with GAAP, consistently applied.

"Cash Equivalents" means money-market instruments of the type described in Borrower's Investment Policy, a copy of which is attached hereto as Exhibit J.

"Cash Income Taxes" means, with respect to any fiscal period, taxes on or measured by the income of Borrower that are paid or currently payable in Cash by Borrower during that fiscal period.

"Cash Interest Expense" means Interest Expense that is paid or currently payable in Cash.

"Certificate" means a certificate signed by a Senior Officer or Responsible Official (as applicable) of the Person providing the certificate.

"Change in Control" means (a) any transaction or series of related transactions in which any Unrelated Person or two or more Unrelated Persons acting in concert acquire beneficial ownership (within the meaning of Rule 13d-3(a)(1) under the Securities Exchange Act of 1934, as amended), directly or indirectly, of 30% or more of the outstanding Common Stock, (b) Borrower consolidates with or merges into another Person or conveys, transfers or leases its properties and assets substantially as an entirety to any Person or any Person consolidates with or merges into Borrower, in either event pursuant to a transaction in which the outstanding Common Stock is changed into or exchanged for cash, securities or other property, with the effect that any Unrelated Person becomes the beneficial owner, directly or indirectly, of 30% or more of Common Stock or that the Persons who were the holders of Common Stock immediately prior to the transaction hold less than 70% of the common stock of the surviving corporation after the transaction, or (c) during any period of 24 consecutive months, individuals who at the beginning of such period constituted the board of directors of Borrower (together with any new or replacement directors whose election by the board of directors, or whose nomination for election, was approved by a vote of at least a majority of the directors then still in office who were either directors at the

beginning of such period or whose election or nomination for reelection was previously so approved) cease for any reason to constitute a majority of the directors then in office. For purposes of the foregoing, the term "Unrelated Person" means any Person other than (i) a Subsidiary of Borrower or (ii) an employee stock ownership plan or other employee benefit plan covering the employees of Borrower and its Subsidiaries.

"Closing Date" means the time and Banking Day on which the conditions set forth in Section 8.1 are satisfied or waived. The Administrative Agent shall notify Borrower, the Lenders and the Collateral Agent of the date that is the Closing Date.

"Code" means the Internal Revenue Code of 1986, as amended or replaced and as in effect from time to time.

"Collateral" means all of the collateral covered by the Security Agreement.

"Collateral Agent" means Comerica when acting in its capacity as the Collateral Agent under any of the Loan Documents, or any successor Collateral Agent.

"Comerica" means Comerica Bank - California, a California banking corporation.

"Commercial Letter of Credit" means each Letter of Credit issued to support the purchase of goods by Borrower which is determined to be a commercial letter of credit by the Issuing Lender.

"Commitment" means, subject to Section 2.5, \$20,000,000. The respective Pro Rata Shares of the Lenders with respect to the Commitment are set forth in Schedule 1.1.

"Commitment Assignment and Acceptance" means a commitment assignment and acceptance substantially in the form of Exhibit B.

"Common Stock" means the common stock of Borrower or its successor.

"Compliance Certificate" means a certificate in the form of Exhibit C, properly completed and signed by a Senior Officer of Borrower.

"Contractual Obligation" means, as to any Person, any provision of any outstanding security issued by that Person or of any material agreement, instrument or undertaking to which that Person is a party or by which it or any of its Property is bound.

"Credit Issuance" means the making of an Advance or the issuance of a Letter of Credit.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, as amended from time to time, and all other applicable liquidation,

conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws from time to time in effect affecting the rights of creditors generally.

"Default" means any event that, with the giving of any applicable notice or passage of time specified in Section 9.1, or both, would be an Event of Default.

"Default Rate" means the sum of (a) any incremental interest rate then in effect pursuant to Section 3.1(d) plus (b) the interest rate prescribed in Section 3.7.

"Designated Deposit Account" means a deposit account to be maintained by Borrower with UBOC or one of its Affiliates, as from time to time designated by Borrower by written notification to the Administrative Agent.

"Designated Eurodollar Market" means, with respect to any Eurodollar Rate Loan, the London Eurodollar Market.

"Disqualified Stock" means any capital stock, warrants, options or other rights to acquire capital stock (but excluding any debt security which is convertible, or exchangeable, for capital stock), which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Revolving Loan Maturity Date.

"Disposition" means the sale, transfer or other disposition in any single transaction or series of related transactions of any asset, or group of related assets, of Borrower or any of its Subsidiaries (a) which asset or assets constitute a line of business or substantially all the assets of Borrower or the Subsidiary or (b) the aggregate amount of the Net Cash Sales Proceeds of such assets is more than \$500,000, other than (i) inventory or other assets sold or otherwise disposed of in the ordinary course of business of Borrower or its Subsidiary or normal in the industry, (ii) equipment sold or otherwise disposed of where substantially similar equipment in replacement thereof has theretofore been acquired, or thereafter within 90 days is acquired, by Borrower or its Subsidiary and (iii) assets no longer useful in the business of Borrower and its Subsidiaries.

"Distribution" means, with respect to any shares of capital stock or any warrant or option to purchase an equity security or other equity security issued by a Person, (a) the retirement, redemption, purchase or other acquisition for Cash or for Property by such Person of any such security, (b) the declaration or (without duplication) payment by such Person of any dividend in Cash or in Property on or with respect to any such security, (c) any Investment by such Person in the holder of 5% or more of any such security if a purpose of such Investment is to avoid characterization of the transaction as a Distribution and (d) any other payment in Cash or Property by such Person constituting a distribution under applicable Laws with respect to such security.

"Dollars" or "\$" means United States of America dollars.

"EBITDA" means, with respect to any fiscal period and with respect to Borrower and its Subsidiaries on a consolidated basis, the sum of (a) net profit after tax, minus (b) interest income, plus (c) income taxes accrued, whether or not paid for such fiscal period, plus (d) Interest Expense for such fiscal period, plus (e) depreciation, plus (f) amortization, plus (g) to the extent included in such fiscal period, non-recurring acquisition costs associated with Permitted Acquisitions, all as determined on a trailing twelve-month basis in accordance with GAAP; provided, however, during the term of this Agreement, on a cumulative basis, write-offs, in an aggregate amount not exceeding \$4,800,000, of accounts receivable or other amounts due to Borrower or its Affiliates from Orbcomm or its Affiliates shall not be deducted from EBITDA; and provided further that during the term of this Agreement, on a cumulative basis, up to \$5,000,000 of non-recurring, non-cash charges for the impairment of goodwill in accordance with Financial Accounting Standards Board Statement No. 142 and up to \$*** of non-recurring, non-cash write downs of Borrower's assets related to Astrolink shall be added to Borrower's net profit after taxes in determining EBITDA.

"Eligible Account" means, as of any date of determination, an Account of Borrower:

(a) that has been the subject of an invoice, payable within thirty (30) days of the date of determination or containing such longer payment terms as are typical for Borrower's business and as may be approved by the Collateral Agent in its reasonable credit judgment ("permitted extended terms"), and otherwise in form and substance reasonably acceptable to the Collateral Agent;

(b) that conforms to all of the representations and warranties pertaining to Accounts set forth in this Agreement or any other Loan Document;

(c) (i) that arises from the sale and final delivery and/or completion of goods of, or the final performance of services by, Borrower in the ordinary course of its business (or in each case, the achievement of contractual milestones, but excluding, any obligation for warranty repair) and (ii) that is subject to a valid, perfected and continuing first priority Lien in favor of the Collateral Agent for the benefit of itself and the Lenders and is owned by Borrower free and clear of any rights, claims, Liens or other interests of any Person other than Liens in favor of the Collateral Agent for the benefit of the Lenders;

(d) that (i) is a bona fide, valid and enforceable obligation of the applicable Account Debtor upon which Borrower's right to receive payment is absolute and not contingent upon the fulfillment of any condition whatsoever, and (ii) does not arise with respect to (A) goods that are placed on consignment, guaranteed sale, sale or return or sale on approval or delivered on a bill-and-hold or cash-on-delivery basis, (B) goods that have been returned, rejected or repossessed, or (C) goods sold upon other terms by reason of which payment by the applicable Account Debtor is or may be conditional;

(e) with respect to which the applicable Account Debtor has not asserted any defense, counterclaim, set-off or dispute, and such Account is not a "contra" Account;

(f) with respect to which the applicable Account Debtor is not (i) a Federal, state or local governmental entity or agency, unless Borrower has complied with the Federal Assignment of Claims Act of 1940 or any applicable state statute or municipal ordinance of similar purpose and effect with respect to such Account, (ii) an Affiliate, a Subsidiary, or an employee of Borrower, or (iii) located outside the United States of America, unless such Account (or a portion thereof) either (A) is supported by a letter of credit or foreign account credit insurance satisfactory to the Collateral Agent in its reasonable discretion (provided that, if only a portion of such Account is supported by a satisfactory letter of credit or credit insurance, only such portion shall be deemed an "Eligible Account") or (B) is otherwise satisfactory to the Collateral Agent in its reasonable discretion, including being subject to such advance rate as the Collateral Agent deems appropriate for such account in the reasonable discretion of the Collateral Agent, with the understanding that such advance rate may be lower than the advance rate referred to in clause (a) of the definition of "Borrowing Base";

(g) with respect to which the applicable Account Debtor has not: (i) commenced or been the subject of a case or proceeding under any Debtor Relief Law; (ii) made a general assignment for the benefit of creditors; (iii) failed to pay its debts generally as they come due, suspended business or become insolvent; or (iv) consented to or suffered the appointment of a receiver, trustee, liquidator or custodian for it or for all or a significant portion of its assets or affairs;

(h) the collection of which, in the Collateral Agent's reasonable discretion (unless objected to by the Requisite Lenders), is not doubtful by reason of the applicable Account Debtor's financial condition or otherwise;

(i) that is not evidenced by any chattel paper, instrument or judgment;

(j) that is not the subject of a "rebilling" or other re-invoicing of such Account submitted to the applicable Account Debtor on a date that is more than 30 days following the date upon which the initial invoice with respect to such Account was submitted to that Account Debtor;

(k) to the extent that the total unpaid amount of such Account (if such Account is owed to Borrower by an Account Debtor other than the United States Government or any agency or instrumentality thereof), when added together with all other Accounts due to Borrower from the applicable Account Debtor, does not exceed 15% of all Accounts of Borrower (unless the Collateral Agent (with the concurrence of the Requisite Lenders) shall have notified Borrower in writing that it has approved a greater percentage with respect to any particular Account Debtor);

(l) that is not in default (an Account shall be deemed to be in default under this clause (l) if (i) such Account is not paid within 90 days following its original

invoice date or if such Account is subject to permitted extended terms, within 60 days following its due date, or (ii) such Account is an obligation of an Account Debtor with respect to which more than 25% of all Accounts due to Borrower from such Account Debtor have not been paid within 90 days following their original invoice date or 60 days following their due date, as applicable); and

(m) that is otherwise not deemed unacceptable to the Collateral Agent in its reasonable credit judgment.

"Eligible Assignee" means (a) another Lender, (b) with respect to any Lender, any Affiliate of that Lender, (c) any commercial bank having total assets of \$1,000,000,000 or more, (d) any (i) savings bank, savings and loan association or similar financial institution or (ii) insurance company engaged in the business of writing insurance which, in either case (A) has total assets of \$1,000,000,000 or more, (B) is engaged in the business of lending money and extending credit under credit facilities substantially similar to those extended under this Agreement and (C) is operationally and procedurally able to meet the obligations of a Lender hereunder to the same degree as a commercial bank and (e) any other financial institution (including a mutual fund or other fund) having total assets of \$1,000,000,000 or more which meets the requirements set forth in subclauses (B) and (C) of clause (d) above; provided that each Eligible Assignee must either (aa) be organized under the Laws of the United States of America, any State thereof or the District of Columbia or be organized under the Laws of the Cayman Islands or any country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of such a country, and (i) act hereunder through a branch, agency or funding office located in the United States of America and (ii) be exempt from withholding of tax on interest and deliver the documents related thereto pursuant to Section 11.21.

"Eligible Inventory" means, as of any date of determination, Inventory of Borrower:

(a) that (i) consists of raw materials or finished goods held for sale in the ordinary course of Borrower's business, (ii) is subject to a valid, perfected and continuing first priority Lien in favor of the Collateral Agent for the benefit of itself and the Lenders, and (iii) is owned by Borrower free and clear of any rights, claims, Liens or other interests of any Person other than Permitted Encumbrances or Liens in favor of the Collateral Agent for the benefit of the Lenders;

(b) that is (i) located on premises owned, leased or operated by Borrower or (ii) stored on premises owned or operated by a bailee, warehouseman or similar Person, in each case with respect to which the applicable mortgagee, landlord, bailee, warehouseman or similar Person shall have executed and delivered to the Collateral Agent, a mortgagee waiver, landlord waiver, bailee letter or similar document, in each case, in form and substance reasonably acceptable to the Collateral Agent;

(c) that conforms to all of the representations or warranties pertaining to Inventory set forth in this Agreement or any other Loan Document;

(d) that is not (i) placed on consignment or (ii) in transit;

(e) that does not consist of packaging or shipping materials, pallets, bags, labels, boxes, capitalized freight and handling costs, manufacturing supplies or replacement parts;

(f) that does not constitute obsolete, slow-moving, shopworn, unmerchantable, unsalable, returned, damaged, excess, unusable or unworkable goods or goods unfit for further processing, or floor models or "demos";

(g) that is covered by property and casualty insurance reasonably acceptable to the Collateral Agent;

(h) that is only covered by non-negotiable documents of title unless the negotiable document representing such Inventory has been delivered to the Collateral Agent, for the benefit of itself and the Lenders; and

(i) that is otherwise acceptable to the Collateral Agent in its reasonable credit judgment.

"ERISA" means the Employee Retirement Income Security Act of 1974, and any regulations or rulings issued pursuant thereto, as amended or replaced and as in effect from time to time.

"ERISA Affiliate" means each Person (whether or not incorporated) which is required to be aggregated with Borrower pursuant to Section 414 of the Code.

"Eurodollar Banking Day" means any Banking Day on which dealings in Dollar deposits are conducted by and among banks in the Designated Eurodollar Market.

"Eurodollar Lending Office" means, as to each Lender, its office or branch so designated by written notice to Borrower and the Administrative Agent as its Eurodollar Lending Office. If no Eurodollar Lending Office is designated by a Lender, its Eurodollar Lending Office shall be its office at its address for purposes of notices hereunder.

"Eurodollar Market" means a regular established market located outside the United States of America by and among banks for the solicitation, offer and acceptance of Dollar deposits in such banks.

"Eurodollar Obligations" means eurocurrency liabilities, as defined in Regulation D or any comparable regulation of any Governmental Agency having jurisdiction over any Lender.

"Eurodollar Period" means, as to each Eurodollar Rate Loan, the period commencing on the date specified by Borrower pursuant to Section 2.1(c) and ending 1, 2 or 3 months (or, with the written consent of all of the Lenders, any other period) thereafter, as specified by Borrower in the applicable Request for Loan; provided that:

(a) The first day of any Eurodollar Period shall be a Eurodollar Banking Day;

(b) Any Eurodollar Period that would otherwise end on a day that is not a Eurodollar Banking Day shall be extended to the immediately succeeding Eurodollar Banking Day unless such Eurodollar Banking Day falls in another calendar month, in which case such Eurodollar Period shall end on the immediately preceding Eurodollar Banking Day; and

(c) No Eurodollar Period shall extend beyond the Revolving Loan Maturity Date.

"Eurodollar Rate" means, with respect to any Eurodollar Rate Loan, the average of the interest rates per annum (rounded upward, if necessary, to the next 1/16 of 1%) at which deposits in Dollars are offered to the Administrative Agent in the Designated Eurodollar Market at or about 11:00 a.m. local time in the Designated Eurodollar Market, two (2) Eurodollar Banking Days before the first day of the applicable Eurodollar Period in an aggregate amount approximately equal to the amount of the Advance to be made by the Administrative Agent with respect to such Eurodollar Rate Loan and for a period of time comparable to the number of days in the applicable Eurodollar Period.

"Eurodollar Rate Advance" means an Advance made hereunder and specified to be a Eurodollar Rate Advance in accordance with Article 2.

"Eurodollar Rate Loan" means a Loan made hereunder and specified to be a Eurodollar Rate Loan in accordance with Article 2.

"Event of Default" shall have the meaning provided in Section 9.1.

"Existing Letters of Credit" means the letters of credit, if any, outstanding on the Closing Date and listed on Schedule 2.4.

"Existing Loan Agreement" shall have the meaning provided in the recitals to this Agreement.

"Fiscal Quarter" means the fiscal quarter of Borrower ending on each June 30, September 30, December 31 and March 31.

"Fiscal Year" means the fiscal year of Borrower ending on each March 31.

"Foreign Subsidiary" means a Subsidiary of Borrower that (a) is organized under the Laws of a country (or political subdivision thereof) other than the United

States of America and (b) holds all or substantially all of its assets outside the United States of America.

"GAAP" means, as of any date of determination, accounting principles (a) set forth as generally accepted in then currently effective Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants, (b) set forth as generally accepted in then currently effective Statements of the Financial Accounting Standards Board or (c) that are then approved by such other entity as may be approved by a significant segment of the accounting profession in the United States of America. The term "consistently applied," as used in connection therewith, means that the accounting principles applied are consistent in all material respects with those applied at prior dates or for prior periods.

"Government Securities" means readily marketable (a) direct full faith and credit obligations of the United States of America or obligations guaranteed by the full faith and credit of the United States of America and (b) obligations of an agency or instrumentality of, or corporation owned, controlled or sponsored by, the United States of America that are generally considered in the securities industry to be implicit obligations of the United States of America.

"Governmental Agency" means (a) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body or (c) any court or administrative tribunal of competent jurisdiction.

"Guaranty Obligation" means, as to any Person, any (a) guarantee by that Person of Indebtedness of, or other obligation performable by, any other Person or (b) assurance given by that Person to an obligee of any other Person with respect to the performance of an obligation by, or the financial condition of, such other Person, whether direct, indirect or contingent, including any purchase or repurchase agreement covering such obligation or any collateral security therefor, any agreement to provide funds (by means of loans, capital contributions or otherwise) to such other Person, any agreement to support the solvency or level of any balance sheet item of such other Person or any "keep-well" or other arrangement of whatever nature given for the purpose of assuring or holding harmless such obligee against loss with respect to any obligation of such other Person; provided, however, that the term Guaranty Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation in respect of Indebtedness shall be deemed to be an amount equal to the stated or determinable amount of the related Indebtedness (unless the Guaranty Obligation is limited by its terms to a lesser amount, in which case to the extent of such amount) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the Person in good faith. The amount of any other Guaranty Obligation shall be deemed to be zero unless and until the amount thereof has been (or in accordance with Financial Accounting Standards Board Statement No. 5 should be)

quantified and reflected or disclosed in the consolidated financial statements (or notes thereto) of Borrower.

"Hazardous Materials" means substances defined as "hazardous substances" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., or as "hazardous", "toxic" or "pollutant" substances or as "solid waste" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or as "friable asbestos" pursuant to the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. or any other applicable Hazardous Materials Law, in each case as such Laws are amended from time to time.

"Hazardous Materials Laws" means all Laws governing the treatment, transportation or disposal of Hazardous Materials applicable to any of the Real Property.

"Immeon" means Immeon Networks LLC, a Delaware limited liability company and a joint venture between Borrower and Loral Skynet.

"Indebtedness" means, as to any Person (without duplication), (a) indebtedness of such Person for borrowed money or for the deferred purchase price of Property (excluding trade and other accounts payable in the ordinary course of business in accordance with ordinary trade terms), including any Guaranty Obligation for any such indebtedness, (b) indebtedness of such Person of the nature described in clause (a) that is non-recourse to the credit of such Person but is secured by assets of such Person, to the extent of the fair market value of such assets as determined in good faith by such Person, (c) Capital Lease Obligations of such Person, (d) indebtedness of such Person arising under bankers' acceptance facilities, (e) any direct or contingent obligations of such Person under letters of credit issued for the account of such Person and (f) any net obligations of such Person under Interest Rate Protection Agreements.

"Intangible Assets" means assets that are considered intangible assets under GAAP, including customer lists, goodwill, covenants not to compete, copyrights, trade names, trademarks, licenses and patents.

"Interest Expense" means, with respect to any Person and as of the last day of any fiscal period, the sum of (a) all interest, fees, charges and related expenses (in each case as such expenses are calculated according to GAAP) paid or payable (without duplication) for that fiscal period by that Person to a lender in connection with borrowed money (including any obligations for fees, charges and related expenses payable to the issuer of any letter of credit) or the deferred purchase price of assets that are considered "interest expense" under GAAP plus (b) the portion of rent paid or payable (without duplication) for that fiscal period by that Person under Capital Lease Obligations that should be treated as interest in accordance with Financial Accounting Standards Board Statement No. 13.

"Interest Rate Protection Agreement" means a written agreement between Borrower and one or more financial institutions providing for "swap", "cap", "collar" or other interest rate protection with respect to any Indebtedness.

"Inventory" means all "inventory," as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including all goods, merchandise and other personal property held for sale or lease by any such Person, or which is furnished by such Person under any contract of service or is held by such Person as raw materials, work or goods in process, materials and supplies of every nature used or consumed or to be used or consumed by such Person in the ordinary course of its business, whether now owned or hereafter acquired by such Person.

"Investment" means, when used in connection with any Person, any investment by or of that Person, whether by means of purchase or other acquisition of stock or other securities of any other Person or by means of a loan, advance creating a debt, capital contribution, guaranty or other debt or equity participation or interest in any other Person, including any partnership and joint venture interests of such Person. The amount of any Investment shall be the amount actually invested (minus any return of capital with respect to such Investment which has actually been received in Cash or has been converted into Cash), without adjustment for subsequent increases or decreases in the value of such Investment.

"Issuing Lender" means UBOC.

"Joint Venture" means any Investment by Borrower in any Person that is not a Wholly-Owned Subsidiary of Borrower, which Person is engaged in the same or a similar line of business as Borrower.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents.

"Lender" means each lender whose name is set forth in the signature pages of this Agreement and each lender which may hereafter become a party to this Agreement pursuant to Section 11.8.

"Letters of Credit" means (a) the Existing Letters of Credit and (b) any of the Commercial Letters of Credit or Standby Letters of Credit issued by the Issuing Lender under the Commitment pursuant to Section 2.4, either as originally issued or as the same may be supplemented, modified, amended, renewed, extended or supplanted.

"Leverage Ratio" means, as of the last day of any Fiscal Quarter, the ratio of (a) all Indebtedness of Borrower and its Subsidiaries on that date to (b) EBITDA for the fiscal period consisting of the four (4) Fiscal Quarters ended on that date.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of Law or otherwise, affecting any

Property, including any conditional sale or other title retention agreement, any lease in the nature of a security interest, and/or the filing of any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the Uniform Commercial Code or comparable Law of any jurisdiction with respect to any Property.

"Loan" means, as the context may require, the amount of a particular Advance made or to be made, or the aggregate of the Advances made at any one time by the Lenders pursuant to Section 2.1.

"Loan Documents" means, collectively, this Agreement, the Notes, the Subsidiary Guaranty, the Security Agreement, and any other agreements of any type or nature hereafter executed and delivered by Borrower or any of the Subsidiary Guarantors to the Administrative Agent, the Collateral Agent or to any Lender in any way relating to or in furtherance of this Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified, amended, restated, extended or supplanted.

"Margin Stock" means "margin stock" as such term is defined in Regulation U.

"Material Adverse Effect" means any set of circumstances or events which (a) has had or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of any Loan Document, (b) has been or could reasonably be expected to be material and adverse to the business or condition (financial or otherwise) of Borrower and its Subsidiaries, taken as a whole or (c) has materially impaired or could reasonably be expected to materially impair the ability of Borrower to perform the Obligations.

"Monthly Payment Date" means the first day of each calendar month.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA to which Borrower or any of its ERISA Affiliates contributes or is obligated to contribute.

"Net Cash Issuance Proceeds" means, with respect to the issuance of any debt security or equity security by Borrower or any of its Subsidiaries, the Cash proceeds received by or for the account of Borrower or such Subsidiary in consideration of such issuance net of (a) underwriting discounts and commissions actually paid to any Person not an Affiliate of Borrower and (b) professional fees and disbursements actually paid in connection therewith.

"Net Cash Sales Proceeds" means, with respect to any Disposition, the sum of (a) the Cash proceeds received by or for the account of Borrower and its Subsidiaries from such Disposition plus (b) the amount of Cash received by or for the account of Borrower and its Subsidiaries upon the sale, collection or other liquidation of any proceeds that are not Cash from such Disposition, in each case net of (i) any amount required to be paid to any Person owning an interest in the assets disposed of, (ii) any amount applied to the repayment of Indebtedness secured by a Lien permitted under

Section 6.9 on the asset disposed of, (iii) any transfer, income or other taxes payable as a result of such Disposition, (iv) professional fees and expenses, fees due to any Governmental Agency, broker's commissions and other out-of-pocket costs of sale actually paid to any Person that is not an Affiliate of Borrower attributable to such Disposition and (v) any reserves established in accordance with GAAP in connection with such Disposition.

"Net Income" means, with respect to any fiscal period, the consolidated net income of Borrower and its Subsidiaries for that period, determined in accordance with GAAP, consistently applied.

"Note" means any of the Revolving Notes, and "Notes" means all of the Revolving Notes.

"Obligations" means all present and future obligations of every kind or nature of Borrower or any of the Subsidiary Guarantors at any time and from time to time owed to the Administrative Agent, the Collateral Agent or the Lenders or any one or more of them, under any one or more of the Loan Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including obligations of performance as well as obligations of payment, and including interest that accrues after the commencement of any proceeding under any Debtor Relief Law by or against Borrower or any of the Subsidiary Guarantors. "Obligations" includes, without limitation, all debts, liabilities and obligations now or hereafter owing from Borrower to any Lender or any Affiliate of a Lender arising from or related to Bank Products.

"Opinion of Counsel" means the favorable written legal opinion of counsel to Borrower, substantially in the form of Exhibit D, together with copies of factual certificates and legal opinions, if any, delivered to such counsel in connection with such opinion upon which such counsel has relied.

"Party" means any Person other than the Administrative Agent, the Collateral Agent and the Lenders, which now or hereafter is a party to any of the Loan Documents.

"PBG" means the Pension Benefit Guaranty Corporation or any successor thereof established under ERISA.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, which is subject to Title IV of ERISA and is maintained by Borrower or to which Borrower contributes or has an obligation to contribute.

"Permitted Acquisition" means any Acquisition by Borrower or any Subsidiary of Borrower (as applicable, the "acquiror") of another Person engaged in the same or a similar line of business as that of the acquiror (the "target"), provided that: (i) no Default or Event of Default shall exist at the time of such Acquisition or occur after giving effect to such Acquisition; (ii) such Acquisition shall have been approved by

the board of directors of the target; (iii) the pro-forma balance sheets and combining projections (including pro-forma financial covenant ratios) provided by Borrower to the Administrative Agent shall have demonstrated that, after giving effect to such Acquisition, (A) Borrower would have been in compliance with the financial covenants set forth in Sections 6.12, 6.13, 6.14 and 6.15 of this Agreement throughout the period of the four (4) Fiscal Quarters most recently ended prior to the date of such Acquisition (or such shorter period in which the target has been in existence) and (B) Borrower would remain in compliance with such financial covenants for the period of four (4) Fiscal Quarters immediately following the date of such Acquisition; (iv) Borrower shall have borrowing availability under its Revolving Loan or cash on hand of at least \$10,000,000 after giving effect to such Acquisition; (v) the terms and conditions of any and all seller purchase-money financing provided to the acquiror in connection with such Acquisition shall be acceptable to the Administrative Agent and the Lenders in their reasonable discretion; and (vi) Borrower shall use commercially reasonable efforts to provide the Administrative Agent with at least one (1) week prior written notice of such Acquisition, together with at least one (1) year (or such shorter period in which the target has been in existence) of historical financial information relating to the target and such other documentation pertaining to the Acquisition, including pro-forma quarterly projections, as the Administrative Agent may reasonably request.

"Permitted Encumbrances" means:

(a) inchoate Liens incident to construction on or maintenance of Property; or Liens incident to construction on or maintenance of Property now or hereafter filed of record for which adequate reserves have been set aside (or deposits made pursuant to applicable Law) and which are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by reason of nonpayment of the obligations secured by such Liens, no such Property is subject to a material impending risk of loss or forfeiture;

(b) Liens for taxes and assessments on Property which are not yet past due; or Liens for taxes and assessments on Property for which adequate reserves have been set aside and are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by reason of nonpayment of the obligations secured by such Liens, no such Property is subject to a material impending risk of loss or forfeiture;

(c) defects and irregularities in title to any Property which in the aggregate do not materially impair the fair market value or use of the Property for the purposes for which it is or may reasonably be expected to be held;

(d) easements, exceptions, reservations, or other agreements for the purpose of pipelines, conduits, cables, wire communication lines, power lines and substations, streets, trails, walkways, drainage, irrigation, water, and sewerage purposes, dikes, canals, ditches, the removal of oil, gas, coal, or other minerals, and other like purposes affecting Property which in the aggregate do not materially burden

or impair the fair market value or use of such Property for the purposes for which it is or may reasonably be expected to be held;

(e) easements, exceptions, reservations, or other agreements for the purpose of facilitating the joint or common use of Property in or adjacent to a shopping center or similar project affecting Property which in the aggregate do not materially burden or impair the fair market value or use of such Property for the purposes for which it is or may reasonably be expected to be held;

(f) rights reserved to or vested in any Governmental Agency to control or regulate, or obligations or duties to any Governmental Agency with respect to, the use of any Property;

(g) rights reserved to or vested in any Governmental Agency to control or regulate, or obligations or duties to any Governmental Agency with respect to, any right, power, franchise, grant, license, or permit;

(h) present or future zoning laws and ordinances or other laws and ordinances restricting the occupancy, use, or enjoyment of Property;

(i) statutory Liens, other than those described in clauses (a) or (b) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith, provided that, if delinquent, adequate reserves have been set aside with respect thereto and, by reason of nonpayment, no Property is subject to a material impending risk of loss or forfeiture;

(j) covenants, conditions, and restrictions affecting the use of Property which in the aggregate do not materially impair the fair market value or use of the Property for the purposes for which it is or may reasonably be expected to be held;

(k) rights of tenants under leases and rental agreements covering Property entered into in the ordinary course of business of the Person owning such Property;

(l) Liens consisting of pledges or deposits to secure obligations under workers' compensation laws or similar legislation, including Liens of judgments thereunder which are not currently dischargeable;

(m) Liens consisting of pledges or deposits of Property to secure performance in connection with operating leases made in the ordinary course of business;

(n) Liens consisting of deposits of Property to secure bids made with respect to, or performance of, contracts (other than contracts creating or evidencing an extension of credit to the depositor);

(o) Liens consisting of any right of offset, or statutory bankers' lien, on bank deposit accounts maintained in the ordinary course of business so long as such bank deposit accounts are not established or maintained for the purpose of providing such right of offset or bankers' lien;

(p) Liens consisting of deposits of Property to secure statutory obligations of Borrower;

(q) Liens consisting of deposits of Property to secure (or in lieu of) surety, appeal or customs bonds;

(r) Liens created by or resulting from any litigation or legal proceeding in the ordinary course of business which is currently being contested in good faith by appropriate proceedings, provided that, adequate reserves have been set aside and no material Property is subject to a material impending risk of loss or forfeiture;

(s) Liens created to secure the purchase price of property or assets; provided, that (a) any such Lien shall attach only to the property or assets purchased, (b) the Indebtedness secured by any such Lien shall not exceed one hundred percent (100%) of the purchase price of the property or assets purchased, (c) any such Lien shall be created within twelve (12) months following the acquisition of such property or assets, and (d) the principal amount of Indebtedness secured by such Liens does not exceed \$3,000,000 in the aggregate at any time; and

(t) other non-consensual Liens incurred in the ordinary course of business but not in connection with the incurrence of any Indebtedness, which do not in the aggregate, when taken together with all other Liens, materially impair the fair market value or use of the Property for the purposes for which it is or may reasonably be expected to be held.

"Permitted Right of Others" means a Right of Others consisting of (a) an interest (other than a legal or equitable co-ownership interest, an option or right to acquire a legal or equitable co-ownership interest and any interest of a ground lessor under a ground lease), that does not materially impair the fair market value or use of Property for the purposes for which it is or may reasonably be expected to be held, (b) an option or right to acquire a Lien that would be a Permitted Encumbrance, (c) the subordination of a lease or sublease in favor of a financing entity and (d) a license, or similar right, of or to Intangible Assets granted in the ordinary course of business.

"Person" means any individual or entity, including a trustee, corporation, limited liability company, general partnership, limited partnership, joint stock company, trust, estate, unincorporated organization, business association, firm, joint venture, Governmental Agency, or other entity.

"Prime Rate" means the rate of interest publicly announced from time to time by the Administrative Agent in San Francisco, California (or other headquarters city of the Administrative Agent), as its "reference rate." The "reference rate" is one of

several base rates used by the Administrative Agent and serves as the basis upon which effective rates of interest are calculated for loans and other credits making reference thereto. The "reference rate" is not necessarily the lowest base interest rate used by the Administrative Agent. The "reference rate" is evidenced by the recording thereof after its announcement in such internal publication or publications as the Administrative Agent may designate. Any change in the Prime Rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

"Projections" means the projected financial information to be prepared by Borrower and furnished to the Lenders hereunder.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Pro Rata Share" means, with respect to each Lender, the percentage of the Commitment set forth opposite the name of that Lender on Schedule 1.1, as such percentage may be increased or decreased pursuant to a Commitment Assignment and Acceptance executed in accordance with Section 11.8.

"Quarterly Payment Date" means each April 1, July 1, October 1 and January 1, commencing with January 1, 2003.

"Quick Ratio" means, as of the last day of any Fiscal Quarter, in respect of Borrower and its Subsidiaries on a consolidated basis and determined in accordance with GAAP, the ratio of (a) the sum of (i) Cash and Cash Equivalents, (ii) accounts receivable other than those owed to Borrower by account debtors involved in proceedings under a Debtor Relief Law and (iii) marketable securities to (b) current liabilities, including the aggregate outstanding principal balance of, and all accrued and unpaid interest on, the Revolving Loans.

"Real Property" means, as of any date of determination, all real property then or theretofore owned, leased or occupied by any of Borrower or its Subsidiaries.

"Regulation D" means Regulation D, as at any time amended, of the Board of Governors of the Federal Reserve System, or any other regulation in substance substituted therefor.

"Regulation U" means Regulation U, as at any time amended, of the Board of Governors of the Federal Reserve System, or any other regulation in substance substituted therefor.

"Request for Letter of Credit" means a written request for a Letter of Credit substantially in the form of Exhibit E, signed by a Responsible Official of Borrower and properly completed to provide all information required to be included therein.

"Request for Loan" means a written request for a Loan substantially in the form of Exhibit F, signed by a Responsible Official of Borrower, on behalf of

Borrower, and properly completed to provide all information required to be included therein.

"Requirement of Law" means, as to any Person, the articles or certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any Law, or judgment, award, decree, writ or determination of a Governmental Agency, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Requisite Lenders" means (a) as of any date of determination if the Commitments are then in effect, Lenders having in the aggregate 60% or more of the Commitments then in effect and (b) as of any date of determination if the Commitments have then been suspended or terminated and there is then any Indebtedness evidenced by the Notes, Lenders holding Notes evidencing in the aggregate 60% or more of the aggregate Indebtedness then evidenced by the Notes, and, in any event, not less than two (2) Lenders (unless there shall then be but one Lender).

"Responsible Official" means (a) any Senior Officer of Borrower and (b) any other responsible official of Borrower so designated in a written notice thereof from a Senior Officer to the Administrative Agent. The Lenders shall be entitled to conclusively rely upon any document or certificate that is signed or executed by a Responsible Official of Borrower or any of its Subsidiaries as having been authorized by all necessary corporate, partnership and/or other action on the part of Borrower or such Subsidiary.

"Revolving Loan" means a Loan made under the Commitment.

"Revolving Loan Maturity Date" means September 30, 2003.

"Revolving Note" means any of the promissory notes made by Borrower to a Lender evidencing Advances under that Lender's Pro Rata Share of the Commitment, substantially in the form of Exhibit G, either as originally executed or as the same may from time to time be supplemented, modified, amended, renewed, extended or supplanted.

"Right of Others" means, as to any Property in which a Person has an interest, any legal or equitable right, title or other interest (other than a Lien) held by any other Person in that Property, and any option or right held by any other Person to acquire any such right, title or other interest in that Property, including any option or right to acquire a Lien; provided, however, that (a) no covenant restricting the use or disposition of Property of such Person contained in any Contractual Obligation of such Person and (b) no provision contained in a contract creating a right of payment or performance in favor of a Person that conditions, limits, restricts, diminishes, transfers or terminates such right shall be deemed to constitute a Right of Others.

"Security Agreement" means the security agreement to be executed and delivered pursuant to Article 8 by Borrower and the Subsidiary Guarantors, in the

form of Exhibit H, either as originally executed or as it may from time to time be supplemented, modified, amended, extended or supplanted.

"Senior Officer" means (a) the chief executive officer, (b) the president, (c) any executive vice president, (d) the chief financial officer or (e) the treasurer, in each case of Borrower.

"Significant Domestic Subsidiary" means a Significant Subsidiary that is not a Foreign Subsidiary.

"Significant Foreign Subsidiary" means a Foreign Subsidiary that is a Significant Subsidiary.

"Significant Subsidiary" means a Subsidiary that either (i) had net income for the Fiscal Year then most recently ended in excess of 5% of Net Income for such Fiscal Year or (ii) had assets in excess of 5% of the total assets of Borrower and its Subsidiaries on a consolidated basis as at the end of the Fiscal Year then most recently ended.

"Special Eurodollar Circumstance" means the application or adoption after the Closing Date of any Law or interpretation, or any change therein or thereof, or any change in the interpretation or administration thereof by any Governmental Agency, central bank or comparable authority charged with the interpretation or administration thereof, or compliance by any Lender or its Eurodollar Lending Office with any request or directive (whether or not having the force of Law) of any such Governmental Agency, central bank or comparable authority.

"Standby Letter of Credit" means each Letter of Credit issued by the Issuing Lender under the Commitment pursuant to Section 2.4 to support the payment or performance of an obligation by Borrower.

"Stockholders' Equity" means, as of any date of determination and with respect to any Person, the consolidated stockholders' equity of the Person as of that date determined in accordance with GAAP; provided that there shall be excluded from Stockholders' Equity any amount attributable to Disqualified Stock.

"Subordinated Obligations" means any Indebtedness of Borrower that (a) does not have any scheduled principal payment, mandatory principal prepayment or sinking fund payment due prior to the date that is one year after the Revolving Loan Maturity Date, (b) is not secured by any Lien on any Property of Borrower or any of its Subsidiaries, (c) is not guaranteed by any Subsidiary of Borrower, (d) is subordinated by its terms in right of payment to the Obligations pursuant to provisions acceptable to the Requisite Lenders, (e) is subject to such financial and other covenants and events of defaults as may be acceptable to the Requisite Lenders and (f) is subject to customary interest blockage and delayed acceleration provisions as may be acceptable to the Requisite Lenders.

"Subsidiary" means, as of any date of determination and with respect to any Person, any corporation, limited liability company or partnership (whether or not, in any case, characterized as such or as a "joint venture"), whether now existing or hereafter organized or acquired: (a) in the case of a corporation or limited liability company, of which a majority of the securities having ordinary voting power for the election of directors or other governing body (other than securities having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person and/or one or more Subsidiaries of such Person, or (b) in the case of a partnership, of which a majority of the partnership or other ownership interests are at the time beneficially owned by such Person and/or one or more of its Subsidiaries. Notwithstanding the foregoing, the terms, provisions and limitations of this Agreement (including the representations and warranties set forth in Article IV and the covenants set forth in Article V and VI) shall not apply to either (i) Immeon or (ii) Trellisware Technologies, Inc., a Delaware corporation.

"Subsidiary Guarantors" means all Significant Domestic Subsidiaries.

"Subsidiary Guaranty" means the continuing guaranty of the Obligations to be executed and delivered pursuant to Article 8 by the Subsidiary Guarantors, in the form of Exhibit I, either as originally executed or as it may from time to time be supplemented, modified, amended, extended or supplanted.

"Tangible Net Worth" means, as of any date of determination, the difference between (a) the sum of (i) Stockholders' Equity of Borrower and its Subsidiaries on such date and (ii) Subordinated Obligations outstanding on such date, and (b) the sum of (i) all Intangible Assets of Borrower and its Subsidiaries on such date, (ii) organizational expenses and (iii) monies due from Affiliates (including officers, shareholders and directors) of Borrower and its Subsidiaries on such date.

"to the best knowledge of" means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by a Responsible Official of that Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person in similar circumstances would have done) would have been known by the Person (or, in the case of a Person other than a natural Person, would have been known by a Responsible Official of that Person).

"type", when used with respect to any Loan or Advance, means the designation of whether such Loan or Advance is a Base Rate Loan or Advance, or a Eurodollar Rate Loan or Advance.

"UBOC" means Union Bank of California, N.A., a national banking association.

"UCC" means the Uniform Commercial Code as the same may from time to time be enacted and in effect in the State of California; provided that, in the event by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of any Lien of the Lenders on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"Wholly-Owned Subsidiary" means a Subsidiary of Borrower, 100% of the capital stock or other equity interest of which is owned, directly or indirectly, by Borrower, except for director's qualifying shares required by applicable Laws.

1.2 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class.

1.3 Accounting Terms. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, except as otherwise specifically prescribed herein. In the event that GAAP changes during the term of this Agreement such that the covenants contained in Sections 6.12 through 6.15, inclusive, would then be calculated in a different manner or with different components, (a) Borrower and the Lenders agree to amend this Agreement in such respects as are necessary to conform those covenants as criteria for evaluating Borrower's financial condition to substantially the same criteria as were effective prior to such change in GAAP and (b) Borrower shall be deemed to be in compliance with the covenants contained in the aforesaid Sections if and to the extent that Borrower would have been in compliance therewith under GAAP as in effect immediately prior to such change, but shall have the obligation to deliver each of the materials described in Article 7 to the Administrative Agent and the Lenders, on the dates therein specified, with financial data presented in a manner which conforms with GAAP as in effect immediately prior to such change.

1.4 Rounding. Any financial ratios required to be maintained by Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed in this Agreement and rounding the result up or down to the nearest number (with a round-up if there is no nearest number) to the number of places by which such ratio is expressed in this Agreement.

1.5 Exhibits and Schedules. All Exhibits and Schedules to this Agreement, either as originally existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference. A matter disclosed on any Schedule shall be deemed disclosed on all Schedules.

1.6 References to "Borrower and its Subsidiaries". Any reference herein to "Borrower and its Subsidiaries" or the like shall refer solely to Borrower during such times, if any, as Borrower shall have no Subsidiaries.

1.7 Miscellaneous Terms. The term "or" is disjunctive; the term "and" is conjunctive. The term "shall" is mandatory; the term "may" is permissive. Masculine terms also apply to females; feminine terms also apply to males. The term "including" is by way of example and not limitation.

Article 2.
LOANS AND LETTERS OF CREDIT

2.1 Loans-General.

(a) Subject to the terms and conditions set forth in this Agreement, at any time and from time to time from the Closing Date through the Revolving Loan Maturity Date, each Lender shall, pro rata according to that Lender's Pro Rata Share of the then applicable Commitment, make Advances to Borrower under the Commitment in such amounts as Borrower may request that do not result in the sum of (i) the aggregate principal amount outstanding under the Revolving Notes and (ii) the Aggregate Effective Amount of all outstanding Letters of Credit to exceed the lesser of (x) the then applicable Borrowing Base or (y) the then applicable Commitment. Subject to the limitations set forth herein, Borrower may borrow, repay and reborrow under the Commitment without premium or penalty.

(b) Subject to the next sentence, each Loan shall be made pursuant to a Request for Loan which shall specify the requested (i) date of such Loan, (ii) type of Loan, (iii) amount of such Loan, and (iv) in the case of a Eurodollar Rate Loan, the Eurodollar Period for such Loan. Unless the Administrative Agent has notified, in its reasonable discretion, Borrower to the contrary, a Loan may be requested by telephone by a Responsible Official of Borrower, in which case Borrower shall confirm such request by promptly delivering a Request for Loan (conforming to the preceding sentence) in person or by telecopier to the Administrative Agent. The Administrative Agent shall incur no liability whatsoever hereunder in acting upon any telephonic request for Loan purportedly made by a Responsible Official of Borrower, and Borrower hereby agrees to indemnify the Administrative Agent from any loss, cost, expense or liability as a result of so acting.

(c) Promptly following receipt of a Request for Loan, the Administrative Agent shall notify each Lender by telephone or telecopier (and if by telephone, promptly confirmed by telecopier) of the date and type of the Loan, the applicable Eurodollar Period, and that Lender's Pro Rata Share of the Loan. Not later than 12:00 p.m., California time, on the date specified for any Loan (which must be a Banking Day), each Lender shall make its Pro Rata Share of the Loan in immediately available funds available to the Administrative Agent at the Administrative Agent's Office. Upon satisfaction or waiver of the applicable conditions set forth in Article 8, all Advances shall be credited on that date in immediately available funds to the Designated Deposit Account.

(d) Unless the Requisite Lenders otherwise consent, each Revolving Loan which is a Base Rate Loan shall be not less than \$250,000 and in an integral multiple of \$100,000 and each Revolving Loan which is a Eurodollar Rate Loan shall be not less than \$250,000 and in an integral multiple of \$250,000.

(e) The Advances made by each Lender under the Commitment shall be evidenced by that Lender's Revolving Note.

(f) A Request for Loan that is a Eurodollar Rate Loan shall become irrevocable three Eurodollar Banking Days before the requested date of the Loan. A Request for Loan that is a Base Rate Loan shall become irrevocable one Banking Day before the requested date of the Loan.

(g) If no Request for Loan (or telephonic request for Loan referred to in the second sentence of Section 2.1(c), if applicable) has been made within the requisite notice periods set forth in Section 2.2 or 2.3 prior to the end of the Eurodollar Period for any outstanding Eurodollar Rate Loan, then on the last day of such Eurodollar Period, such Eurodollar Rate Loan shall be automatically converted into a Base Rate Loan in the same amount.

2.2 Base Rate Loans. Each request by Borrower for a Base Rate Loan shall be made pursuant to a Request for Loan (or telephonic or other request for loan referred to in the second sentence of Section 2.1(c), if applicable) received by the Administrative Agent, at the Administrative Agent's Office, not later than 10:00 a.m. California time, on the date (which must be a Banking Day) immediately prior to the date of the requested Base Rate Loan. All Loans shall constitute Base Rate Loans unless properly designated as a Eurodollar Rate Loan pursuant to Section 2.3.

2.3 Eurodollar Rate Loans.

(a) Each request by Borrower for a Eurodollar Rate Loan shall be made pursuant to a Request for Loan (or telephonic or other request for Loan referred to in the second sentence of Section 2.1(c), if applicable) received by the Administrative Agent, at the Administrative Agent's Office, not later than 9:00 a.m., California time, at least three (3) Eurodollar Banking Days before the first day of the applicable Eurodollar Period.

(b) On the date which is two (2) Eurodollar Banking Days before the first day of the applicable Eurodollar Period, the Administrative Agent shall confirm its determination of the applicable Eurodollar Rate (which determination shall be conclusive in the absence of manifest error) and promptly shall give notice of the same to Borrower and the Lenders by telephone or telecopier (and if by telephone, promptly confirmed by telecopier).

(c) Unless the Administrative Agent and the Requisite Lenders otherwise consent, no more than three (3) Eurodollar Rate Loans shall be outstanding at any one time.

(d) No Eurodollar Rate Loan may be requested during the continuation of a Default or Event of Default.

(e) Nothing contained herein shall require any Lender to fund any Eurodollar Rate Advance in the Designated Eurodollar Market.

2.4 Letters of Credit.

(a) The Existing Letters of Credit described in Schedule 2.4 shall be Letters of Credit for all purposes under this Agreement. Subject to the terms and conditions hereof, at any time and from time to time from the Closing Date through the Revolving Loan Maturity Date, the Issuing Lender shall issue such Letters of Credit under the Commitment as Borrower may request by a Request for Letter of Credit; provided that (i) giving effect to all such Letters of Credit, the sum of (A) the aggregate principal amount outstanding under the Revolving Notes plus (B) the Aggregate Effective Amount of all outstanding Letters of Credit, does not exceed the then applicable Commitment and (ii) the Aggregate Effective Amount under all outstanding Letters of Credit does not exceed \$4,000,000. Each Letter of Credit shall be in a form reasonably acceptable to the Issuing Lender. Unless all the Lenders otherwise consent in a writing delivered to the Administrative Agent, the term of any Letter of Credit (other than any Existing Letters of Credit) shall not exceed one (1) year or extend one hundred eighty (180) days beyond the Revolving Loan Maturity Date.

(b) Each Request for Letter of Credit shall be submitted to the Issuing Lender, with a copy to the Administrative Agent, at least two (2) Banking Days prior to the date upon which the related Letter of Credit is proposed to be issued. The Administrative Agent shall promptly notify the Issuing Lender whether such Request for Letter of Credit, and the issuance of a Letter of Credit pursuant thereto, conforms to the requirements of this Agreement. Upon issuance of a Letter of Credit, the Issuing Lender shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify the Lenders, of the amount and terms thereof.

(c) Upon the issuance of a Letter of Credit, each Lender shall be deemed to have purchased a pro rata participation in such Letter of Credit from the Issuing Lender in an amount equal to that Lender's Pro Rata Share of the Commitment. Without limiting the scope and nature of each Lender's participation in any Letter of Credit, to the extent that the Issuing Lender has not been reimbursed by Borrower for any payment required to be made by the Issuing Lender under any Letter of Credit, each Lender shall, pro rata according to its Pro Rata Share, reimburse the Issuing Lender through the Administrative Agent promptly upon demand for the amount of such payment. The obligation of each Lender to so reimburse the Issuing Lender shall be absolute and unconditional and shall not be affected by the occurrence of an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of Borrower to reimburse the Issuing Lender for the amount of any payment made by the Issuing Lender under any Letter of Credit together with interest as hereinafter provided.

(d) Borrower agrees to pay to the Issuing Lender through the Administrative Agent an amount equal to any payment made by the Issuing Lender with respect to each Letter of Credit within one (1) Banking Day after demand made by the Issuing Lender therefor, together with interest on such amount from the date of

any payment made by the Issuing Lender at the rate applicable to Base Rate Loans for two (2) Banking Days and thereafter at the Default Rate. The principal amount of any such payment shall be used to reimburse the Issuing Lender for the payment made by it under the Letter of Credit and, to the extent that the Lenders have not reimbursed the Issuing Lender pursuant to Section 2.4(c), the interest amount of any such payment shall be for the account of the Issuing Lender. Each Lender that has reimbursed the Issuing Lender pursuant to Section 2.4(c) for its Pro Rata Share of any payment made by the Issuing Lender under a Letter of Credit shall thereupon acquire a pro rata participation, to the extent of such reimbursement, in the claim of the Issuing Lender against Borrower for reimbursement of principal and interest under this Section 2.4(d) and shall share, in accordance with that pro rata participation, in any principal payment made by Borrower with respect to such claim and in any interest payment made by Borrower (but only with respect to periods subsequent to the date such Lender reimbursed the Issuing Lender) with respect to such claim.

(e) Borrower may, pursuant to a Request for Loan, request that Advances be made pursuant to Section 2.1(a) to provide funds for the payment required by Section 2.4(d) and, for this purpose, the conditions precedent set forth in Article 8 shall not apply. The proceeds of such Advances shall be paid directly to the Issuing Lender to reimburse it for the payment made by it under the Letter of Credit.

(f) If Borrower fails to make the payment required by Section 2.4(d) within the time period therein set forth, in lieu of the reimbursement to the Issuing Lender under Section 2.4(c) the Issuing Lender may (but is not required to), without notice to or the consent of Borrower, instruct the Administrative Agent to cause Advances to be made by the Lenders under the Commitment in an aggregate amount equal to the amount paid by the Issuing Lender with respect to that Letter of Credit and, for this purpose, the conditions precedent set forth in Article 8 shall not apply. The proceeds of such Advances shall be paid directly to the Issuing Lender to reimburse it for the payment made by it under the Letter of Credit.

(g) The issuance of any supplement, modification, amendment, renewal, or extension to or of any Letter of Credit shall be treated in all respects the same as the issuance of a new Letter of Credit.

(h) The obligation of Borrower to pay to the Issuing Lender the amount of any payment made by the Issuing Lender under any Letter of Credit shall be absolute, unconditional, and irrevocable, subject only to performance by the Issuing Lender of its obligations to Borrower under Uniform Commercial Code Section 5109. Without limiting the foregoing, Borrower's obligations shall not be affected by any of the following circumstances:

(i) any lack of validity or enforceability prior to its stated expiration date of the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) any amendment or waiver of or any consent to departure from the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto, with the consent of Borrower;

(iii) the existence of any claim, setoff, defense, or other rights which Borrower may have at any time against the Issuing Lender, the Administrative Agent or any Lender, any beneficiary of the Letter of Credit (or any persons or entities for whom any such beneficiary may be acting) or any other Person, whether in connection with the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto, or any unrelated transactions;

(iv) any demand, statement, or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever so long as any such document appeared substantially to comply with the terms of the Letter of Credit;

(v) payment by the Issuing Lender in good faith under the Letter of Credit against presentation of a draft or any accompanying document which does not strictly comply with the terms of the Letter of Credit, unless the acceptance of such draft or other accompanying document constituted gross negligence;

(vi) the existence, character, quality, quantity, condition, packing, value or delivery of any Property purported to be represented by documents presented in connection with any Letter of Credit or any difference between any such Property and the character, quality, quantity, condition, or value of such Property as described in such documents;

(vii) the time, place, manner, order or contents of shipments or deliveries of Property as described in documents presented in connection with any Letter of Credit or the existence, nature and extent of any insurance relative thereto;

(viii) the solvency or financial responsibility of any party issuing any documents in connection with a Letter of Credit;

(ix) any failure or delay in notice of shipments or arrival of any Property;

(x) any error in the transmission of any message relating to a Letter of Credit not caused by the Issuing Lender, or any delay or interruption in any such message;

(xi) any error, neglect or default of any correspondent of the Issuing Lender in connection with a Letter of Credit;

(xii) any consequence arising from acts of God, war, insurrection, civil unrest, disturbances, labor disputes, emergency conditions or other causes beyond the control of the Issuing Lender;

(xiii) so long as the Issuing Lender in good faith determines that the contract or document appears substantially to comply with the terms of the Letter of Credit, the form, accuracy, genuineness or legal effect of any contract or document referred to in any document submitted to the Issuing Lender in connection with a Letter of Credit unless the Issuing Lender's actions constituted gross negligence; and

(xiv) where the Issuing Lender has acted in good faith and observed general banking usage, any other circumstances whatsoever unless the Issuing Lender's actions constituted gross negligence.

(i) The Issuing Lender shall be entitled to the protection accorded to the Administrative Agent pursuant to Section 10.6, with all necessary changes.

(j) The Uniform Customs and Practice for Documentary Credits, as published in its most current version by the International Chamber of Commerce, shall be deemed a part of this Section and shall apply to all Letters of Credit to the extent not inconsistent with applicable Law.

2.5 Voluntary Reduction of Commitment. Borrower shall have the right, at any time and from time to time, without penalty or charge, upon at least five (5) Banking Days' prior written notice by a Responsible Official of Borrower to the Administrative Agent, voluntarily to reduce, permanently and irrevocably, in aggregate principal amounts in an integral multiple of \$500,000 but not less than \$5,000,000, or to terminate, all or a portion of the then undisbursed portion of the Commitment. The Administrative Agent shall promptly notify the Lenders of any reduction or termination of the Commitment under this Section.

2.6 Administrative Agent's Right to Assume Funds Available for Advances. Unless the Administrative Agent shall have been notified by any Lender no later than 10:00 a.m. on the Banking Day of the proposed funding by the Administrative Agent of any Loan that such Lender does not intend to make available to the Administrative Agent such Lender's portion of the total amount of such Loan, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on the date of the Loan and the Administrative Agent may, in reliance upon such assumption, make available to Borrower a corresponding amount. If the Administrative Agent has made funds available to Borrower based on such assumption and such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent promptly shall notify Borrower and Borrower shall pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover from such Lender interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the

Administrative Agent to Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to the daily Federal Funds Rate. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its share of the Commitments or to prejudice any rights which the Administrative Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.7 Collateral. The Obligations shall be secured by a first priority (subject to Liens permitted by Section 6.9) perfected Lien on the Collateral pursuant to the Security Agreement.

2.8 Annual Collateral Audits. The Collateral Agent, or its agent, may conduct or obtain, at Borrower's expense (not to exceed \$4,000 in the aggregate for any such audit), annual audits of the Accounts and the Inventory, Borrower's books and records, Borrower's accounting system and such other items as the Collateral Agent may reasonably require. Borrower hereby acknowledges and agrees that if the Administrative Agent is not satisfied with its review of the results of any such audit, the Administrative Agent shall have the right, in its reasonable credit judgment, to reduce the advance rate for Eligible Accounts or Eligible Inventory.

Article 3.
PAYMENTS AND FEES

3.1 Principal and Interest.

(a) Interest shall be payable on the outstanding daily unpaid principal amount of each Advance from the date thereof until payment in full is made and shall accrue and be payable at the rates set forth or provided for herein before and after Default, before and after maturity, before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law, with interest on overdue interest at the Default Rate to the fullest extent permitted by applicable Laws.

(b) Interest accrued on each Base Rate Loan shall be due and payable on each Monthly Payment Date. Except as otherwise provided in Sections 3.1(d) and 3.8, the unpaid principal amount of any Base Rate Loan shall bear interest at a fluctuating rate per annum equal to the Base Rate plus ***%. Each change in the interest rate under this Section 3.1(b) due to a change in the Base Rate shall take effect simultaneously with the corresponding change in the Base Rate.

(c) Interest accrued on each Eurodollar Rate Loan shall be due and payable on the last day of the related Eurodollar Period. Except as otherwise provided in Sections 3.1(d) and 3.8, the unpaid principal amount of any Eurodollar Rate Loan shall bear interest at a rate per annum equal to the Eurodollar Rate for that Eurodollar Rate Loan plus ***%.

(d) During the existence of an Event of Default, the Loans shall bear interest at a rate per annum equal to the sum of (i) the interest rate specified in Sections 3.1(b) or 3.1(c), whichever is applicable, plus (ii) two (2) percentage points.

(e) If not sooner paid, the principal Indebtedness evidenced by the Notes shall be payable as follows:

(i) the amount, if any, by which the sum of (A) the principal Indebtedness evidenced by the Revolving Notes plus (B) the Aggregate Effective Amount of all outstanding Letters of Credit at any time exceeds the then applicable Commitment shall be payable immediately; and

(ii) the principal Indebtedness evidenced by the Revolving Notes shall in any event be payable on the Revolving Loan Maturity Date.

(f) The principal Indebtedness evidenced by the Notes may, at any time and from time to time, voluntarily be paid or prepaid in whole or in part without premium or penalty, except that with respect to any voluntary prepayment under this Subsection, (i) any partial prepayment of a Revolving Loan shall be not less than \$100,000 and shall be an integral multiple of \$50,000 unless the entire outstanding amount of such Loan is being prepaid, (ii) the Administrative Agent shall have received written notice of any prepayment by 9:00 a.m. California time on the date

that is one (1) Banking Day before the date of prepayment (which must be a Banking Day) in the case of a Base Rate Loan, and, in the case of a Eurodollar Rate Loan, three (3) Banking Days before the date of prepayment, which notice shall identify the date and amount of the prepayment and the Loan(s) being prepaid, (iii) each prepayment of principal on any Eurodollar Rate Loan shall be accompanied by payment of interest accrued to the date of payment on the amount of principal paid, and (iv) any payment or prepayment of all or any part of any Eurodollar Rate Loan on a day other than the last day of the applicable Eurodollar Period shall be subject to Section 3.7(e).

3.2 Closing Fee. On the Closing Date, Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders, a one-time, non-refundable fee in the amount of \$***.

3.3 Commitment Fee. From the Closing Date through the Revolving Loan Maturity Date, Borrower shall pay to the Administrative Agent, for the ratable accounts of the Lenders pro rata according to their Pro Rata Share of the Revolving Commitment, a commitment fee equal to 0.50% per annum times the average daily amount by which the Commitment exceeds the (i) aggregate daily principal Indebtedness evidenced by the Revolving Notes plus (ii) the Aggregate Effective Amount of all Letters of Credit then outstanding. The commitment fee shall be payable quarterly in arrears as of each Quarterly Payment Date within ten (10) days after receipt by Borrower of an invoice therefor from the Administrative Agent.

3.4 Letter of Credit Fees. With respect to each Letter of Credit, Borrower shall pay the following fees:

(a) concurrently with the issuance of each Standby Letter of Credit, to the Administrative Agent a standby letter of credit fee in an amount equal to two and one-half percent (2.50%) per annum times the face amount of such Standby Letter of Credit through the termination or expiration of such Standby Letter of Credit, the first 10% of which fee the Administrative Agent shall promptly pay to UBOC and the remainder of which fee the Administrative Agent shall promptly pay to the Lenders ratably, in accordance with their respective Pro Rata Shares of the Commitment;

(b) concurrently with the issuance of each Commercial Letter of Credit, to the Administrative Agent a commercial letter of credit issuance fee in the amount set forth from time to time as the Issuing Lender's published scheduled fee for the issuance of commercial letters of credit, which fee the Administrative Agent shall promptly pay to the Lenders ratably, in accordance with their respective Pro Rata Shares of the Commitment; and

(c) concurrently with each negotiation, drawing or amendment of each Commercial Letter of Credit, to the Issuing Lender for the sole account of the Issuing Lender, negotiation, drawing and amendment fees in the amounts set forth from time to time as the Issuing Lender's published scheduled fees for such services.

Each of the fees payable with respect to Letters of Credit under this Section is earned when due and is nonrefundable.

3.5 Increased Commitment Costs. If any Lender shall determine in good faith that the introduction after the Closing Date of any applicable law, rule, regulation or guideline regarding capital adequacy, or any change therein or any change in the interpretation or administration thereof by any central bank or other Governmental Agency charged with the interpretation or administration thereof, or compliance by such Lender (or its Eurodollar Lending Office) or any corporation controlling such Lender, with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such central bank or other authority not imposed as a result of such Lender's or such corporation's failure to comply with any other Laws, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy and such Lender's desired return on capital) determines in good faith that the amount of such capital is increased, or the rate of return on capital is reduced, as a consequence of its obligations under this Agreement, then, within five (5) Banking Days after demand of such Lender, Borrower shall pay to such Lender, from time to time as specified in good faith by such Lender, additional amounts sufficient to compensate such Lender in light of such circumstances, to the extent reasonably allocable to such obligations under this Agreement, provided that Borrower shall not be obligated to pay any such amount unless such Lender is charging similar amounts to similarly situated Borrowers and provided further that Borrower shall not be obligated to pay any such amount which arose prior to the date which is ninety (90) days preceding the date of such demand or is attributable to periods prior to the date which is ninety (90) days preceding the date of such demand, and Borrower shall not be obligated to pay any such amount if, within five (5) Banking Days after demand of such Lender, Borrower notifies such Lender of Borrower's intention to repay all Obligations then owing to such Lender and to terminate the Commitments of such Lender, and if Borrower in fact repays such Obligations and terminates such Commitments within thirty (30) days after demand of such Lender. Each Lender's determination of such amounts shall be conclusive in the absence of manifest error.

3.6 Eurodollar Costs and Related Matters.

(a) In the event that any Governmental Agency imposes on any Lender any reserve or comparable requirement (including any emergency, supplemental or other reserve) with respect to the Eurodollar Obligations of that Lender, Borrower shall pay that Lender within five (5) Banking Days after demand all amounts necessary to compensate such Lender (determined as though such Lender's Eurodollar Lending Office had funded 100% of its Eurodollar Rate Advance in the Designated Eurodollar Market) in respect of the imposition of such reserve requirements (provided, that Borrower shall not be obligated to pay any such amount which arose prior to the date which is ninety (90) days preceding the date of such demand or is attributable to periods prior to the date which is ninety (90) days preceding the date of such demand). The Lender's determination of such amount shall be conclusive in the absence of manifest error.

(b) If, after the date hereof, the existence or occurrence of any Special Eurodollar Circumstance:

(1) shall subject any Lender or its Eurodollar Lending Office to any tax, duty or other charge or cost with respect to any Eurodollar Rate Advance, any of its Notes evidencing Eurodollar Rate Loans or its obligation to make Eurodollar Rate Advances, or shall change the basis of taxation of payments to any Lender attributable to the principal of or interest on any Eurodollar Rate Advance or any other amounts due under this Agreement in respect of any Eurodollar Rate Advance, any of its Notes evidencing Eurodollar Rate Loans or its obligation to make Eurodollar Rate Advances, excluding (i) taxes imposed on or measured in whole or in part by its overall net income by (A) any jurisdiction (or political subdivision thereof) in which it is organized or maintains its principal office or Eurodollar Lending Office or (B) any jurisdiction (or political subdivision thereof) in which it is "doing business" and (ii) any withholding taxes or other taxes based on gross income imposed by the United States of America for any period with respect to which it has failed to provide Borrower with the appropriate form or forms required by Section 11.21, to the extent such forms are then required by applicable Laws; -----

(2) shall impose, modify or deem applicable any reserve not applicable or deemed applicable on the date hereof (including any reserve imposed by the Board of Governors of the Federal Reserve System, special deposit, capital or similar requirements against assets of, deposits with or for the account of, or credit extended by, any Lender or its Eurodollar Lending Office); or

(3) shall impose on any Lender or its Eurodollar Lending Office or the Designated Eurodollar Market any other condition affecting any Eurodollar Rate Advance, any of its Notes evidencing Eurodollar Rate Loans, its obligation to make Eurodollar Rate Advances or this Agreement, or shall otherwise affect any of the same;

and the result of any of the foregoing, as determined in good faith by such Lender, increases the cost to such Lender or its Eurodollar Lending Office of making or maintaining any Eurodollar Rate Advance or in respect of any Eurodollar Rate Advance, any of its Notes evidencing Eurodollar Rate Loans or its obligation to make Eurodollar Rate Advances or reduces the amount of any sum received or receivable by such Lender or its Eurodollar Lending Office with respect to any Eurodollar Rate Advance, any of its Notes evidencing Eurodollar Rate Loans or its obligation to make Eurodollar Rate Advances (assuming such Lender's Eurodollar Lending Office had funded 100% of its Eurodollar Rate Advance in the Designated Eurodollar Market), then, within five (5) Banking Days after demand by such Lender (with a copy to the Administrative Agent), Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction (determined as though such Lender's Eurodollar Lending Office had funded 100% of

its Eurodollar Rate Advance in the Designated Eurodollar Market); provided, that Borrower shall not be obligated to pay any such amount which arose prior to the date which is ninety (90) days preceding the date of such demand or is attributable to periods prior to the date which is ninety (90) days preceding the date of such demand. A statement of any Lender claiming compensation under this subsection shall be conclusive in the absence of manifest error.

(c) If, after the date hereof, the existence or occurrence of any Special Eurodollar Circumstance shall, in the good faith opinion of any Lender, make it unlawful or impossible for such Lender or its Eurodollar Lending Office to make, maintain or fund its portion of any Eurodollar Rate Loan, or materially restrict the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the Designated Eurodollar Market, or to determine or charge interest rates based upon the Eurodollar Rate, and such Lender shall so notify the Administrative Agent, then such Lender's obligation to make Eurodollar Rate Advances shall be suspended for the duration of such illegality or impossibility and the Administrative Agent forthwith shall give notice thereof to the other Lenders and Borrower. Upon receipt of such notice, the outstanding principal amount of such Lender's Eurodollar Rate Advances, together with accrued interest thereon, automatically shall be converted to Base Rate Advances on either (1) the last day of the Eurodollar Period(s) applicable to such Eurodollar Rate Advances if such Lender may lawfully continue to maintain and fund such Eurodollar Rate Advances to such day(s) or (2) immediately if such Lender may not lawfully continue to fund and maintain such Eurodollar Rate Advances to such day(s), provided that in such event the conversion shall not be subject to payment of a prepayment fee under Section 3.6(e). Each Lender agrees to endeavor promptly to notify Borrower of any event of which it has actual knowledge, occurring after the Closing Date, which will cause that Lender to notify the Administrative Agent under this Section, and agrees to designate a different Eurodollar Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. In the event that any Lender is unable, for the reasons set forth above, to make, maintain or fund its portion of any Eurodollar Rate Loan, such Lender shall fund such amount as a Base Rate Advance for the same period of time, and such amount shall be treated in all respects as a Base Rate Advance. Any Lender whose obligation to make Eurodollar Rate Advances has been suspended under this Section shall promptly notify the Administrative Agent and Borrower of the cessation of the Special Eurodollar Circumstance which gave rise to such suspension.

(d) If, with respect to any proposed Eurodollar Rate Loan:

(1) the Administrative Agent reasonably determines that, by reason of circumstances affecting the Designated Eurodollar Market generally that are beyond the reasonable control of the Lenders, deposits in Dollars (in the applicable amounts) are not being offered to any Lender in the Designated Eurodollar Market for the applicable Eurodollar Period; or

(2) the Requisite Lenders advise the Administrative Agent that the Eurodollar Rate as determined by the Administrative Agent (i) does not represent the effective pricing to such Lenders for deposits in Dollars in the Designated Eurodollar Market in the relevant amount for the applicable Eurodollar Period, or (ii) will not adequately and fairly reflect the cost to such Lenders of making the applicable Eurodollar Rate Advances;

then the Administrative Agent forthwith shall give notice thereof to Borrower and the Lenders, whereupon until the Administrative Agent notifies Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of the Lenders to make any future Eurodollar Rate Advances shall be suspended.

(e) Upon payment or prepayment of any Eurodollar Rate Advance (other than as the result of a conversion required under Section 3.6(c)) on a day other than the last day in the applicable Eurodollar Period (whether voluntarily, involuntarily, by reason of acceleration, or otherwise), or upon the failure of Borrower (for a reason other than the breach by a Lender of its obligation pursuant to Section 2.1(a) to make an Advance) to borrow on the date or in the amount specified for a Eurodollar Rate Loan in any Request for Loan after such Request for Loan has become irrevocable, Borrower shall pay to the appropriate Lender within five (5) Banking Days after demand a prepayment fee or failure to borrow fee, as the case may be (determined as though 100% of the Eurodollar Rate Advance had been funded in the Designated Eurodollar Market) equal to the sum of:

(1) \$250; plus

(2) the amount, if any, by which (i) the additional interest would have accrued on the amount prepaid or not borrowed at the Eurodollar Rate plus two and one-half percentage points (250 basis points) if that amount had remained or been outstanding through the last day of the applicable Eurodollar Period exceeds (ii) the interest that the Lender could recover by placing such amount on deposit in the Designated Eurodollar Market for a period beginning on the date of the prepayment or failure to borrow and ending on the last day of the applicable Eurodollar Period (or, if no deposit rate quotation is available for such period, for the most comparable period for which a deposit rate quotation may be obtained); plus

(3) all out-of-pocket expenses incurred by the Lender reasonably attributable to such payment, prepayment or failure to borrow.

Each Lender's determination of the amount of any prepayment fee payable under this Section shall be conclusive in the absence of manifest error.

(f) Each Lender agrees to endeavor promptly to notify Borrower of any event of which it has actual knowledge, occurring after the Closing Date, which will entitle such Lender to compensation pursuant to clause (a) or clause (b) of this Section, and agrees to designate a different Eurodollar Lending Office if such

designation will avoid the need for or reduce the amount of such compensation and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. Any request for compensation by a Lender under this Section shall set forth the basis upon which it has been determined that such an amount is due from Borrower, a calculation of the amount due, and a certification that the corresponding costs have been incurred by the Lender. Borrower shall not be obligated to pay any such compensation to a Lender under this Section if, within five (5) Banking Days after receiving notice from such Lender requesting such compensation, Borrower notifies such Lender of Borrower's intention to repay all Obligations then owing to such Lender and to terminate the Commitments of such Lender, and if Borrower in fact repays such Obligations and terminates such Commitments within thirty (30) days after Borrower receipt of such Lender's notice requesting compensation.

3.7 Late Payments. If any installment of principal or interest or any fee or cost or other amount payable under any Loan Document to the Administrative Agent or any Lender is not paid when due, it shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the sum of the Base Rate plus 2%, to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including, without limitation, interest on past due interest) shall be compounded monthly, on the last day of each calendar month, to the fullest extent permitted by applicable Laws.

3.8 Computation of Interest and Fees. Computation of interest and fees under this Agreement shall be calculated on the basis of a year of 360 days and the actual number of days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made; interest shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid. Any Loan that is repaid on the same day on which it is made shall bear interest for one day. Notwithstanding anything in this Agreement to the contrary, interest in excess of the maximum amount permitted by applicable Laws shall not accrue or be payable hereunder or under the Notes, and any amount paid as interest hereunder or under the Notes which would otherwise be in excess of such maximum permitted amount shall instead be treated as a payment of principal.

3.9 Non-Banking Days. If any payment to be made by Borrower or any other Party under any Loan Document shall come due on a day other than a Banking Day, payment shall instead be considered due on the next succeeding Banking Day and the extension of time shall be reflected in computing interest and fees.

3.10 Manner and Treatment of Payments.

(a) Each payment hereunder (except payments pursuant to Sections 3.5, 3.6, 11.3, 11.11 and 11.22) or on the Notes or under any other Loan Document shall be made to the Administrative Agent at the Administrative Agent's Office for the account of each of the Lenders or the Administrative Agent, as the case may be, in immediately available funds not later than 11:00 a.m. California time, on the day of payment (which must be a Banking Day). All payments received after such time, on any Banking Day, shall be deemed received on the next succeeding Banking

Day. The amount of all payments received by the Administrative Agent for the account of each Lender shall be immediately paid by the Administrative Agent to the applicable Lender in immediately available funds and, if such payment was received by the Administrative Agent by 11:00 a.m., California time, on a Banking Day and not so made available to the account of a Lender on that Banking Day, the Administrative Agent shall reimburse that Lender for the cost to such Lender of funding the amount of such payment at the Federal Funds Rate. All payments shall be made in lawful money of the United States of America.

(b) Borrower hereby authorizes the Administrative Agent to debit the general operating bank account of Borrower to effect any payment due to the Lenders or the Administrative Agent pursuant to this Agreement. Any resulting overdraft in such account shall be payable by Borrower to the Administrative Agent on the next following Banking Day.

(c) Except to the extent provided in Sections 3.5 and 3.6(f), each payment or prepayment on account of any Loan shall be applied pro rata according to the outstanding Advances made by each Lender comprising such Loan.

(d) Each Lender shall use its best efforts to keep a record (in writing or by an electronic data entry system) of Advances made by it and payments received by it with respect to each of its Notes and, subject to Section 10.6(g), such record shall, as against Borrower, be presumptive evidence of the amounts owing. Notwithstanding the foregoing sentence, the failure by any Lender to keep such a record shall not affect Borrower's obligation to pay the Obligations.

(e) Each payment of any amount payable by Borrower or any other Party under this Agreement or any other Loan Document shall be made free and clear of, and without reduction by reason of, any taxes, assessments or other charges imposed by any Governmental Agency, central bank or comparable authority, excluding (i) taxes imposed on or measured in whole or in part by its overall net income by (A) any jurisdiction (or political subdivision thereof) in which it is organized or maintains its principal office or Eurodollar Lending Office or (B) any jurisdiction (or political subdivision thereof) in which it is "doing business" and (ii) any withholding taxes or other taxes based on gross income imposed by the United States of America for any period with respect to which it has failed to provide Borrower with the appropriate form or forms required by Section 11.21, to the extent such forms are then required by applicable Laws (all such non-excluded taxes, assessments or other charges being hereinafter referred to as "Taxes"). To the extent that Borrower is obligated by applicable Laws to make any deduction or withholding on account of Taxes from any amount payable to any Lender under this Agreement, Borrower shall (i) make such deduction or withholding and pay the same to the relevant Governmental Agency and (ii) pay such additional amount to that Lender as is necessary to result in that Lender's receiving a net after-Tax amount equal to the amount to which that Lender would have been entitled under this Agreement absent such deduction or withholding. If and when receipt of such payment results in an

excess payment or credit to that Lender on account of such Taxes, that Lender shall promptly refund such excess to Borrower.

3.11 Funding Sources. Nothing in this Agreement shall be deemed to obligate any Lender to obtain the funds for any Loan or Advance in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan or Advance in any particular place or manner.

3.12 Failure to Charge Not Subsequent Waiver. Any decision by the Administrative Agent or any Lender not to require payment of any interest (including interest arising under Section 3.7), fee, cost or other amount payable under any Loan Document, or to calculate any amount payable by a particular method, on any occasion shall in no way limit or be deemed a waiver of the Administrative Agent's or such Lender's right to require full payment of any interest (including interest arising under Section 3.7), fee, cost or other amount payable under any Loan Document, or to calculate an amount payable by another method that is not inconsistent with this Agreement, on any other or subsequent occasion.

3.13 Administrative Agent's Right to Assume Payments Will be Made. Unless the Administrative Agent shall have been notified by Borrower prior to the date on which any payment to be made by Borrower hereunder is due that Borrower does not intend to remit such payment, the Administrative Agent may, in its discretion, assume that Borrower has remitted such payment when so due and the Administrative Agent may, in its discretion and in reliance upon such assumption, make available to each Lender on such payment date an amount equal to such Lender's share of such assumed payment. If Borrower has not in fact remitted such payment to the Administrative Agent, each Lender shall forthwith on demand repay to the Administrative Agent the amount of such assumed payment made available to such Lender, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent at the Federal Funds Rate.

3.14 Fee Determination Detail. The Administrative Agent, and any Lender, shall provide reasonable detail to Borrower regarding the manner in which the amount of any payment to the Administrative Agent and the Lenders, or that Lender, under Article 3 has been determined, concurrently with demand for such payment.

3.15 Survivability. All of Borrower's obligations under Sections 3.5 and 3.6 shall survive for the ninety (90) day period following the date on which the Commitment is terminated and all Loans hereunder are fully paid, and Borrower shall remain obligated thereunder for all claims under such Sections made by any Lender to Borrower prior to the expiration of such period to the extent provided in such Sections.

Article 4.
REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to the Lenders that:

4.1 Existence and Qualification; Power; Compliance With Laws.

Borrower is a corporation duly formed, validly existing and in good standing under the Laws of Delaware. Borrower is duly qualified or registered to transact business and is in good standing in California and each other jurisdiction in which the conduct of its business or the ownership or leasing of its Properties makes such qualification or registration necessary, except where the failure so to qualify or register and to be in good standing would not constitute a Material Adverse Effect. Borrower has all requisite power and authority to conduct its business, to own and lease its Properties and to execute and deliver each Loan Document to which it is a Party and to perform its Obligations. The chief executive offices of Borrower are located in California. All outstanding shares of capital stock of Borrower are duly authorized, validly issued, fully paid and non-assessable, and no holder thereof has any enforceable right of rescission under any applicable state or federal securities Laws. Borrower is in compliance with all Laws and other legal requirements applicable to its business, has obtained all authorizations, consents, approvals, orders, licenses and permits from, and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure so to comply, obtain authorizations, etc., file, register, qualify or obtain exemptions does not constitute a Material Adverse Effect.

4.2 Authority; Compliance With Other Agreements and

Instruments and Government Regulations. The execution, delivery and performance by Borrower and the Subsidiary Guarantors of the Loan Documents to which it is a Party have been duly authorized by all necessary corporate action, and do not and will not:

(a) Require any consent or approval not heretofore obtained of any partner, director, stockholder, security holder or creditor of such Party;

(b) Violate or conflict with any provision of such Party's charter, articles of incorporation or bylaws, as applicable;

(c) Result in or require the creation or imposition of any Lien (other than pursuant to the Loan Documents) or Right of Others upon or with respect to any Property now owned or leased or hereafter acquired by such Party;

(d) Violate any Requirement of Law applicable to such Party in any respect that constitutes a Material Adverse Effect;

(e) Result in a breach of or constitute a default under, or cause or permit the acceleration of any obligation owed under, any indenture or loan or credit agreement or any other Contractual Obligation to which such Party is a party or by which such Party or any of its Property is bound or affected in any respect that constitutes a Material Adverse Effect;

and such Party is not in violation of, or default under, any Requirement of Law or Contractual Obligation, or any indenture, loan or credit agreement described in Section 4.2(e), in any respect that constitutes a Material Adverse Effect.

4.3 No Governmental Approvals Required. Except as previously obtained or made, no authorization, consent, approval, order, license or permit from, or filing, registration or qualification with, any Governmental Agency is or will be required to authorize or permit under applicable Laws the execution, delivery and performance by Borrower or any Subsidiary Guarantor of the Loan Documents to which it is a Party (except where the failure to do so does not constitute a Material Adverse Effect).

4.4 Subsidiaries.

(a) Schedule 4.4 hereto correctly sets forth the names, form of legal entity, number of shares of capital stock issued and outstanding, number of shares owned by Borrower or a Subsidiary of Borrower (specifying such owner) and jurisdictions of organization of all Subsidiaries of Borrower and specifies which thereof, as of the Closing Date, are Inactive Subsidiaries. Except as described in Schedule 4.4, Borrower does not own any capital stock, equity interest or debt security which is convertible, or exchangeable, for capital stock or equity interest in any Person. Unless otherwise indicated in Schedule 4.4, all of the outstanding shares of capital stock, or all of the units of equity interest, as the case may be, of each Subsidiary are owned of record and beneficially by Borrower, there are no outstanding options, warrants or other rights to purchase capital stock of any such Subsidiary, and all such shares or equity interests so owned are duly authorized, validly issued, fully paid and non-assessable, and were issued in compliance with all applicable state and federal securities and other Laws, and are free and clear of all Liens, except for Permitted Encumbrances.

(b) Each Subsidiary is a legal entity of the type described in Schedule 4.4 duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization, is duly qualified to do business as a foreign organization and is in good standing as such in each jurisdiction in which the conduct of its business or the ownership or leasing of its Properties makes such qualification necessary (except where the failure to be so duly qualified and in good standing does not constitute a Material Adverse Effect), and has all requisite power and authority to conduct its business and to own and lease its Properties.

(c) Each Subsidiary is in compliance with all Laws and other requirements applicable to its business and has obtained all authorizations, consents, approvals, orders, licenses, and permits from, and each such Subsidiary has accomplished all filings, registrations, and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Agency that are necessary for the transaction of its business, except where the failure to be in such compliance, obtain such authorizations, consents, approvals, orders, licenses, and permits, accomplish such filings, registrations, and qualifications, or obtain such exemptions, does not constitute a Material Adverse Effect.

4.5 Financial Statements. Borrower has furnished to the Lenders (a) the audited financial statements of Borrower for the Fiscal Year ended March 31, 2002 and (b) the unaudited balance sheet and statement of operations of Borrower for the six-month period ended September 30, 2002. The financial statements described in clause (a) fairly present in all material respects the financial condition, results of operations and changes in financial position, and the balance sheet and statement of operations described in clause (b) fairly present the financial condition and results of operations of Borrower as of such dates and for such periods in conformity with GAAP consistently applied, subject only to normal year-end accruals and audit adjustments.

4.6 No Other Liabilities; No Material Adverse Changes. Borrower and its Subsidiaries do not have any material liability or material contingent liability required under GAAP to be reflected or disclosed, and not reflected or disclosed, in the balance sheet described in Section 4.5(b), other than liabilities and contingent liabilities arising in the ordinary course of business since the date of such financial statements. Except as set forth on Schedule 4.6, as of the Closing Date, to the best of Borrower's knowledge, no circumstance or event has occurred that constitutes a Material Adverse Effect since September 30, 2002.

4.7 Intentionally Deleted.

4.8 Intangible Assets. Borrower and its Subsidiaries own, or possess the right to use to the extent necessary in their respective businesses, all material trademarks, trade names, copyrights, patents, patent rights, computer software, licenses and other Intangible Assets that are used in the conduct of their businesses as now operated, and no such Intangible Asset, to the best knowledge of Borrower, conflicts with the valid trademark, trade name, copyright, patent, patent right or Intangible Asset of any other Person to the extent that such conflict constitutes a Material Adverse Effect. Except as set forth in Schedule 4.8, Borrower has not used any trade name, trade style or "dba" during the five year period ending on the Closing Date.

4.9 Public Utility Holding Company Act. Neither Borrower nor any of its Subsidiaries is a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 1935, as amended.

4.10 Litigation. Except for (a) any matter fully covered as to subject matter and amount (subject to applicable deductibles and retentions) by insurance for which the insurance carrier has not asserted lack of subject matter coverage or reserved its right to do so, (b) any matter, or series of related matters, involving a claim against Borrower or any of its Subsidiaries of less than \$1,000,000, (c) matters of an administrative nature not involving a claim or charge against Borrower or any of its Subsidiaries and (d) matters set forth in Schedule 4.10, there are no actions, suits, proceedings or investigations pending as to which Borrower or any of its Subsidiaries have been served or have received notice or, to the best knowledge of Borrower, threatened against or affecting Borrower or any of its Subsidiaries or any Property of any of them before any Governmental Agency.

4.11 Binding Obligations. Each of the Loan Documents to which Borrower and any Subsidiary Guarantor is a Party will, when executed and delivered by such Party, constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as enforcement may be limited by Debtor Relief Laws or equitable principles relating to the granting of specific performance and other equitable remedies as a matter of judicial discretion.

4.12 No Default. No event has occurred and is continuing that is a Default or Event of Default.

4.13 ERISA.

(a) With respect to each Pension Plan:

(i) such Pension Plan complies in all material respects with ERISA and any other applicable Laws to the extent that noncompliance could reasonably be expected to have a Material Adverse Effect;

(ii) such Pension Plan has not incurred any "accumulated funding deficiency" (as defined in Section 302 of ERISA) that could reasonably be expected to have a Material Adverse Effect;

(iii) no "reportable event" (as defined in Section 4043 of ERISA, but excluding such events as to which the PBGC has by regulation waived the requirement therein contained that it be notified within thirty days of the occurrence of such event) has occurred that could reasonably be expected to have a Material Adverse Effect; and

(iv) neither Borrower nor any of its Subsidiaries has engaged in any non-exempt "prohibited transaction" (as defined in Section 4975 of the Code) that could reasonably be expected to have a Material Adverse Effect.

(b) Neither Borrower nor any of its Subsidiaries has incurred or expects to incur any withdrawal liability to any Multiemployer Plan that could reasonably be expected to have a Material Adverse Effect.

4.14 Regulation U; Investment Company Act. No part of the proceeds of any Loan hereunder will be used to purchase or carry, or to extend credit to others for the purpose of purchasing or carrying, any Margin Stock in violation of Regulation U. Neither Borrower nor any of its Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

4.15 Disclosure. No written statement made by a Senior Officer to the Administrative Agent or any Lender in connection with this Agreement, or in connection with any Loan, as of the date thereof contained any untrue statement of a material fact or omitted a material fact necessary to make the statement made not misleading in light of all the circumstances existing at the date the statement was made.

4.16 Tax Liability. Borrower and its Subsidiaries have filed all tax returns which are required to be filed, and have paid, or made provision for the payment of, all taxes with respect to the periods, Property or transactions covered by said returns, or pursuant to any assessment received by Borrower or any of its Subsidiaries, except (a) such taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained and (b) immaterial taxes so long as no material Property of Borrower or any of its Subsidiaries is at impending risk of being seized, levied upon or forfeited.

4.17 Projections. As of the Closing Date, to the best knowledge of Borrower, the assumptions set forth in the Projections are reasonable and consistent with each other and with all facts known to Borrower, and the Projections are reasonably based on such assumptions. Nothing in this Section 4.17 shall be construed as a representation or covenant that the Projections in fact will be achieved.

4.18 Hazardous Materials. Except as described in Schedule 4.18, as of the Closing Date (a) neither Borrower nor any of its Subsidiaries at any time has disposed of, discharged, released or threatened the release of any Hazardous Materials on, from or under the Real Property in violation of any Hazardous Materials Law that would individually or in the aggregate constitute a Material Adverse Effect, (b) to the best knowledge of Borrower, no condition exists that violates any Hazardous Material Law affecting any Real Property except for such violations that would not individually or in the aggregate constitute a Material Adverse Effect, (c) no Real Property or any portion thereof is or has been utilized by Borrower or any of its Subsidiaries as a site for the manufacture of any Hazardous Materials and (d) to the extent that any Hazardous Materials are used, generated or stored by Borrower or any of its Subsidiaries on any Real Property, or transported to or from such Real Property by Borrower or any of its Subsidiaries, such use, generation, storage and transportation are in compliance with all Hazardous Materials Laws except for such non-compliance that would not constitute a Material Adverse Effect or be materially adverse to the interests of the Lenders.

4.19 Security Interests. Upon the execution and delivery of the Security Agreement, the Security Agreement will create a valid first priority security interest in the Collateral described therein securing the Obligations (subject only to Permitted Encumbrances, Permitted Rights of Others and other matters permitted by Section 6.9 and to such qualifications and exceptions as are contained in the Uniform Commercial Code with respect to the priority of security interests perfected by means other than the filing of a financing statement or with respect to the creation of security interests in Property to which Division 9 of the Uniform Commercial Code does not apply) and all actions necessary to perfect the security interests so created, other than the filing of any required UCC-1 financing statement with the appropriate Governmental Agency, have been taken and completed.

Article 5.
AFFIRMATIVE COVENANTS

(OTHER THAN INFORMATION AND
REPORTING REQUIREMENTS)

So long as any Advance remains unpaid, or any other Obligation remains unpaid, or any portion of the Commitment remains in force, Borrower shall, and shall cause its Subsidiaries to, unless the Administrative Agent (with the written approval of the Requisite Lenders) otherwise consents:

5.1 Payment of Taxes and Other Potential Liens. Pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon any of them, upon their respective Property or any part thereof and upon their respective income or profits or any part thereof, except that Borrower and its Subsidiaries shall not be required to pay or cause to be paid (a) any tax, assessment, charge or levy that is not yet past due, or is being contested in good faith by appropriate proceedings so long as the relevant entity has established and maintains adequate reserves for the payment of the same or (b) any immaterial tax so long as no material Property of Borrower or its Subsidiaries is at impending risk of being seized, levied upon or forfeited.

5.2 Preservation of Existence. Preserve and maintain their respective existences in the jurisdiction of their formation and all material authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits, or registrations from any Governmental Agency that are necessary for the transaction of their respective business and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of their respective business or the ownership or leasing of their respective Properties except (a) a merger permitted by Section 6.3 or as otherwise permitted by this Agreement and (b) where the failure to so qualify or remain qualified would not constitute a Material Adverse Effect. Notwithstanding the foregoing, Borrower may liquidate any Subsidiary that does not constitute a Significant Subsidiary if such liquidation would not have a Material Adverse Effect.

5.3 Maintenance of Properties. Maintain, preserve and protect all of their respective Properties in good order and condition, subject to wear and tear in the ordinary course of business, and not permit any waste of their respective Properties, except that the failure to maintain, preserve and protect a particular item of Property that is at the end of its useful life or that is not of significant value, either intrinsically or to the operations of Borrower, shall not constitute a violation of this covenant.

5.4 Maintenance of Insurance. Maintain liability, casualty, workers' compensation and other insurance (subject to customary deductibles and retentions) with responsible insurance companies in such amounts and against such risks as is carried by responsible companies engaged in similar businesses and owning similar assets in the general areas in which Borrower and its Subsidiaries operate.

5.5 Compliance With Laws. Comply with all Requirements of Law noncompliance with which constitutes a Material Adverse Effect, except that Borrower and its Subsidiaries need not comply with a Requirement of Law then being contested by any of them in good faith by appropriate proceedings.

5.6 Inspection Rights. Upon reasonable notice, at any time during regular business hours and as often as reasonably requested (but not so as to materially interfere with the business of Borrower or any of its Subsidiaries) permit the Administrative Agent, the Collateral Agent or any Lender, or any authorized employee, agent or representative thereof, at their own cost and expense prior to the occurrence of an Event of Default, to examine, audit and make copies and abstracts from the records and books of account of, and to visit and inspect the Properties of, Borrower and its Subsidiaries and to discuss the affairs, finances and accounts of Borrower and its Subsidiaries with any of their officers, key employees, internal accountants and, following the occurrence of an Event of Default, independent accountants. The Administrative Agent, the Collateral Agent or any Lender, or any authorized employee, agent or representative shall (i) comply with all sign-in procedures for visitors, (ii) observe all general and safety, security, and governmental regulations in effect at the site, and (iii) observe all rules regarding restricted areas and restricted information as required by the United States Department of Defense.

5.7 Keeping of Records and Books of Account. Keep adequate records and books of account reflecting all financial transactions in conformity with GAAP, consistently applied, and in material conformity with all applicable requirements of any Governmental Agency having regulatory jurisdiction over Borrower and its Subsidiaries.

5.8 Compliance With Agreements. Promptly and fully comply with all Contractual Obligations to which any one or more of them is a party, except for any such Contractual Obligations (a) the performance of which would cause a Default or (b) then being contested by any of them in good faith by appropriate proceedings or (c) if the failure to comply does not constitute a Material Adverse Effect.

5.9 Use of Proceeds. Use the proceeds of all Revolving Loans for working capital and general corporate purposes of Borrower.

5.10 Hazardous Materials Laws. Keep and maintain all Real Property and each portion thereof in compliance in all material respects with all applicable Hazardous Materials Laws and promptly notify the Administrative Agent in writing (attaching a copy of any pertinent written material) of (a) any and all material enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing by a Governmental Agency pursuant to any applicable Hazardous Materials Laws, (b) any and all material claims made or threatened in writing by any Person against Borrower relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials and (c) discovery by any Senior Officer of any of Borrower of any material occurrence or condition on any real Property adjoining or in the vicinity of such Real Property that could reasonably be expected to cause such Real Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of such Real Property under any applicable Hazardous Materials Laws.

5.11 Syndication Process. Cooperate in such respects as may be reasonably requested by the Arranger in connection with the syndication of the credit facilities under this Agreement, including the provision of information (in form and substance acceptable to the Arranger but subject to confidentiality provisions) for inclusion in written materials furnished to prospective syndicate members and the participation by Senior Officers in meetings with prospective syndicate members. Nothing in this Section 5.11 shall obligate Borrower to amend any Loan Document.

Article 6.
NEGATIVE COVENANTS

So long as any Advance remains unpaid, or any other Obligation remains unpaid, or any portion of the Commitments remains in force, Borrower shall not, and shall not permit any of its Subsidiaries to, unless the Administrative Agent (with the written approval of the Requisite Lenders or, if required by Section 11.2, of all of the Lenders) otherwise consents:

6.1 Payment of Subordinated Obligations. Pay any (a) principal (including sinking fund payments) or any other amount (other than scheduled interest payments) with respect to any Subordinated Obligation, or purchase or redeem (or offer to purchase or redeem) any Subordinated Obligation, or deposit any monies, securities or other Property with any trustee or other Person to provide assurance that the principal or any portion thereof of any Subordinated Obligation will be paid when due or otherwise to provide for the defeasance of any Subordinated Obligation or (b) scheduled interest on any Subordinated Obligation unless the payment thereof is then permitted pursuant to the terms of the indenture or other agreement governing such Subordinated Obligation.

6.2 Disposition of Property. Make any Disposition of its Property, whether now owned or hereafter acquired, except (a) a Disposition by Borrower to a Wholly-Owned Subsidiary, or by a Subsidiary to Borrower or a Wholly-Owned Subsidiary and (b) a Disposition for which the Net Cash Sales Proceeds do not exceed \$5,000,000 or when added to the aggregate Net Cash Sales Proceeds of all Dispositions made during the term of this Agreement do not exceed \$10,000,000.

6.3 Mergers. Merge or consolidate with or into any Person, except (a) mergers and consolidations of a Subsidiary of Borrower into Borrower or a Wholly-Owned Subsidiary, or of Subsidiaries with each other and (b) a merger or consolidation of a Person into Borrower or with or into a Wholly-Owned Subsidiary of Borrower which constitutes a Permitted Acquisition; provided that (i) Borrower is the surviving entity of any merger to which it is a party, (ii) no Default or Event of Default then exists or would result therefrom and (iii) Borrower and each of the Subsidiary Guarantors execute such amendments to the Loan Documents as the Administrative Agent or the Collateral Agent may reasonably determine are appropriate as a result of such merger in order to preserve the enforceability of the Loan Documents on the parties thereto and their successors, if any, and maintain the perfection of the Administrative Agent's Liens on the Collateral.

6.4 Hostile Acquisitions. Directly or indirectly use the proceeds of any Loan in connection with the acquisition of part or all of a voting interest of five percent (5%) or more in any corporation or other business entity if such acquisition is opposed by the board of directors of such corporation or business entity.

6.5 Acquisitions. Make any Acquisition other than a Permitted Acquisition.

6.6 Distributions. Make any Distribution, whether from capital, income or otherwise, and whether in Cash or other Property, except:

(a) Distributions by any Subsidiary to Borrower or to any Wholly-Owned Subsidiary; and

(b) stock dividends payable on Common Stock.

6.7 ERISA. At any time, permit any Pension Plan to: (i) engage in any non-exempt "prohibited transaction" (as defined in Section 4975 of the Code); (ii) fail to comply with ERISA or any other applicable Laws; (iii) incur any material "accumulated funding deficiency" (as defined in Section 302 of ERISA); or (iv) terminate in any manner, which, with respect to each event listed above, could reasonably be expected to result in a Material Adverse Effect or (b) withdraw, completely or partially, from any Multiemployer Plan if to do so could reasonably be expected to result in a Material Adverse Effect.

6.8 Change in Nature of Business. Make any material change in the nature of the business of the Parent and its Subsidiaries, taken as a whole.

6.9 Liens. Create, incur, assume or suffer to exist any Lien of any nature upon or with respect to any of their respective Properties, or engage in any sale and leaseback transaction with respect to any of their respective Properties, whether now owned or hereafter acquired, except:

(a) Liens existing on the Closing Date and disclosed in Schedule 6.9 and any renewals/extensions or amendments thereof, provided that the obligations secured or benefited thereby are not increased;

(b) Liens in favor of the Administrative Agent pursuant to the Security Agreement.

(c) Permitted Encumbrances;

(d) Liens on personal property acquired by Borrower or any of its Subsidiaries that were in existence at the time of the acquisition of such Property and were not created in contemplation of such acquisition;

(e) Liens on real property acquired by Borrower or any of its Subsidiaries for use in the business of Borrower or such Subsidiary;

(f) Liens securing Indebtedness, in an aggregate outstanding principal amount at any time of not more than \$3,000,000, permitted by Section 6.10(d) on and limited to the capital assets acquired, constructed or financed with the proceeds of such Indebtedness or with the proceeds of any Indebtedness directly or indirectly refinanced by such Indebtedness; and

(g) Non-consensual Liens securing Indebtedness of not more than \$500,000, provided that such Liens are discharged within thirty (30) days after their incurrence by Borrower.

6.10 Indebtedness and Guaranty Obligations. Create, incur or assume any Indebtedness or Guaranty Obligation except:

(a) Indebtedness and Guaranty Obligations existing on the Closing Date and disclosed in Schedule 6.10, and refinancings, renewals, extensions or amendments that do not increase the amount thereof;

(b) Indebtedness and Guaranty Obligations under the Loan Documents;

(c) Indebtedness and Guaranty Obligations owed to Borrower or any of its Subsidiaries;

(d) Indebtedness consisting of Capital Lease Obligations, or otherwise incurred to finance the purchase or construction of property or assets (which shall be deemed to exist if the Indebtedness is incurred at or within 90 days before or after the purchase or construction of the property or assets), or to refinance any such Indebtedness, provided that the principal amount of such Indebtedness incurred does not exceed \$3,000,000 in the aggregate at any time.

(e) Indebtedness incurred to finance the purchase or construction of real property used in the business of Borrower or any of its Subsidiaries;

(f) Subordinated Obligations in such amount as may be approved in writing by the Requisite Lenders, except as expressly provided in this Agreement;

(g) Indebtedness consisting of debt securities for which the Net Cash Issuance Proceeds will be applied as a mandatory prepayment pursuant to Section 3.1(f);

(h) Indebtedness consisting of Interest Rate Protection Agreements; and

(i) Guaranty Obligations in support of the obligations of a Wholly-Owned Subsidiary, provided that such obligations are not prohibited by this Agreement.

6.11 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of Borrower other than (a) salary, bonus, employee stock option and other compensation arrangements with directors or officers in the ordinary course of business, (b) transactions that are fully disclosed to the board of directors (or executive committee thereof) of Borrower and expressly authorized by a resolution of the board of directors (or executive committee) of Borrower which is approved by a majority of the directors (or executive committee) not having an interest in the transaction, (c) transactions between or

among Borrower and its Subsidiaries and (d) transactions on overall terms at least as favorable to Borrower or its Subsidiaries as would be the case in an arm's-length transaction between unrelated parties of equal bargaining power. Except as set forth in Schedule 6.11, without limiting the generality of the preceding sentence, in no event shall Borrower pay, or permit any of its Subsidiaries to pay, management fees or fees for services to any Affiliate of Borrower without the prior written approval of the Administrative Agent.

6.12 Leverage Ratio. Permit the Leverage Ratio to be greater than *** to 1.00 as of December 31, 2002 or greater than *** to 1.00 as of March 31, 2003 and June 30, 2003.

6.13 EBITDA. Permit EBITDA for any Fiscal Quarter, commencing with the Fiscal Quarter ending December 31, 2002 to be less than the correlative amount set forth below for such Fiscal Quarter:

Fiscal Quarter Ending Minimum EBITDA ----- ----- ----- ----- -----
December 31, 2002 \$***
March 31, 2003 \$***
June 30, 2003 \$***.

6.14 Tangible Net Worth. Permit Tangible Net Worth as of the last day of any Fiscal Quarter to be less than \$***; provided, however, during the term of this Agreement, on a cumulative basis, up to \$*** of non-recurring, non-cash write downs of Borrower's assets related to Astrolink shall be added to Borrower's tangible Net Worth for the purpose of determining Borrower's compliance with this Section 6.14.

6.15 Quick Ratio. Permit the Quick Ratio as of the last day of any Fiscal Quarter to be less than *** to 1.00;

6.16 Investments. Make or suffer to exist any Investment, other than:

(a) Investments in existence on the Closing Date and disclosed on Schedule 6.16;

(b) Investments consisting of Cash Equivalents;

(c) Investments in a Person that is the subject of the Acquisition permitted by Section 6.5;

(d) Investments consisting of advances to officers, directors and employees of a Borrower or of any Subsidiary for travel, entertainment, relocation, anticipated bonus and analogous ordinary business purposes;

(e) Investments in a Domestic Subsidiary that is a Wholly-Owned Subsidiary;

(f) Investments in a Foreign Subsidiary that is a Wholly-Owned Subsidiary and Investments in Joint Ventures; provided that (i) the aggregate of such Investments in Immeon in any Fiscal Year does not exceed \$3,000,000, (ii) the aggregate of such Investments in Trellisware Technologies, Inc., a Delaware corporation, in any Fiscal Year does not exceed \$3,000,000, and (iii) the aggregate of all such Investments in all Foreign Subsidiaries and Joint Ventures in any Fiscal Year does not exceed \$10,000,000;

(g) Investments consisting of the extension of credit to customers or suppliers of Borrower and its Subsidiaries in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof;

(h) Investments received in connection with the settlement of a bona fide dispute with another Person;

(i) Investments representing all or a portion of the sales price of Property sold or services provided to another Person;

(j) Investments by Foreign Subsidiaries in any other Subsidiary of a Borrower (whether a Domestic Subsidiary or a Foreign Subsidiary); and

(k) Investments not described above not in excess of \$5,000,000 in any Fiscal Year.

6.17 Capital Expenditures. Make any Capital Expenditure in any Fiscal Year, if to do so would result in the aggregate Capital Expenditures made in such Fiscal Year (exclusive of Capital Expenditures made in connection with Permitted Acquisitions) to exceed \$18,000,000.

6.18 Amendments to Subordinated Obligations. Amend or modify any term or provision of any indenture, agreement or instrument evidencing or governing any Subordinated Obligation in any respect that will or may have a Material Adverse Effect.

6.19 Changes in Officers, Name, Location of Chief Executive Offices, Etc. Without providing notification to the Administrative Agent or the Collateral Agent, make any change in the executive officers or other senior management of Borrower or the corporate name of Borrower, or without providing ten (10) calendar days prior written notice to the Administrative Agent or the Collateral Agent, make any change in the location of Borrower's material assets, principal place of business or chief executive office.

Article 7.
INFORMATION AND REPORTING REQUIREMENTS

7.1 Financial and Business Information. So long as any Advance remains unpaid, or any other Obligation remains unpaid, or any portion of the Commitments remains in force, Borrower shall, unless the Administrative Agent (with the written approval of the Requisite Lenders) otherwise consents, at Borrower's sole expense, deliver to the Administrative Agent (except in the case of the collateral reports required by clause (e) below, which shall be delivered to the Collateral Agent) for distribution by it to the Lenders, a sufficient number of copies for all of the Lenders of the following:

(a) As soon as practicable, and in any event within 50 days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter in any Fiscal Year), the consolidated and consolidating balance sheet of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the consolidated and consolidating statements of operations and cash flows for such Fiscal Quarter, and the portion of the Fiscal Year ended with such Fiscal Quarter, all in reasonable detail. Such financial statements shall be certified by the chief financial officer of Borrower or his or her designated representative as fairly presenting the financial condition, results of operations and cash flows of Borrower and its Subsidiaries in accordance with GAAP (other than footnote disclosures), consistently applied, as at such date and for such periods, subject only to normal year-end accruals and audit adjustments;

(b) Intentionally Omitted;

(c) As soon as practicable, and in any event within 120 days after the end of each Fiscal Year, the consolidated and consolidating balance sheet of Borrower and its Subsidiaries as at the end of such Fiscal Year and the consolidated and consolidating statements of operations, stockholders' equity and cash flows, in each case of Borrower and its Subsidiaries for such Fiscal Year, all in reasonable detail. Such financial statements shall be prepared in accordance with GAAP, consistently applied, and such consolidated financial statements shall be accompanied by a report of PricewaterhouseCoopers LLP or other independent public accountants of recognized standing selected by Borrower and reasonably satisfactory to the Requisite Lenders, which report shall be prepared in accordance with generally accepted auditing standards as at such date, and shall not be subject to any qualifications or exceptions as to the scope of the audit nor to any other qualification or exception determined by the Requisite Lenders in their good faith business judgment to be adverse to the interests of the Lenders;

(d) As soon as practicable, and in any event not later than February 15th of each Fiscal Year, a budget and projection by Fiscal Quarter for the following Fiscal Year (the "First Year") and by Fiscal Year for the next succeeding Fiscal Year (the "Second Year"), including for the First Year, projected consolidated balance sheets, statements of operations and statements of cash flow of Borrower and its Subsidiaries, forecast assumptions, and a budget for Capital Expenditures, and, for the Second Year, projected consolidated condensed balance sheets and statements of

operations and cash flows of Borrower and its Subsidiaries, forecast assumptions, and a budget for Capital Expenditures, all in reasonable detail;

(e) As soon as practicable, and in any event not later than 30 days after, and as of, the end of each month, an aging of Borrower's Accounts, by Account Debtor and total and otherwise in form and substance reasonably acceptable to the Collateral Agent (an "Accounts Receivable Aging Report"), and as soon as practicable, and in any event not later than 30 days after the end of each Fiscal Quarter of Borrower, a reconciliation report to reconcile Accounts aged balances to the Accounts listed on the general ledger of Borrower (an "Accounts Receivable Reconciliation Report"), provided, that for any Account that is (i) more than 90 days past invoice date and (ii) in an amount in excess of \$100,000, Borrower shall provide the Administrative Agent with a report detailing the business location of the applicable Account Debtor, the type of Account (e.g., domestic commercial, domestic governmental, foreign commercial, etc.) and any other information that the Administrative Agent or the Collateral Agent may require, in its reasonable discretion;

(f) Promptly after request by the Administrative Agent or any Lender, copies of any detailed audit reports by independent accountants in connection with the accounts or books of Borrower or any of its Subsidiaries, or any audit of any of them;

(g) Promptly after the same are available, and in any event within 5 Banking Days after filing with the Securities and Exchange Commission, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Borrower, and copies of all annual, regular, periodic and special reports and registration statements which Borrower may file or be required to file with the Securities and Exchange Commission under Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, and not otherwise required to be delivered to the Lenders pursuant to other provisions of this Section 7.1;

(h) Promptly after request by the Administrative Agent or any Lender, copies of any other report or other document that was filed by Borrower with any Governmental Agency, but excluding such reports or documents as are filed with any Governmental Agency as part of Borrower's ordinary course transactions with any Governmental Agency;

(i) Promptly upon a Senior Officer becoming aware, and in any event within five (5) Banking Days after becoming aware, of the occurrence of any (i) "reportable event" (as such term is defined in Section 4043 of ERISA, but excluding such events as to which the PBGC has by regulation waived the requirement therein contained that it be notified within thirty days of the occurrence of such event) or (ii) non-exempt "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) involving any Pension Plan or any trust created thereunder, telephonic notice specifying the nature thereof, and, no more than two (2) Banking Days after such telephonic notice, written notice again specifying the nature thereof and specifying what action Borrower is taking or proposes to take with respect

thereto, and, when known, any action taken by the Internal Revenue Service with respect thereto;

(j) As soon as practicable, and in any event within five (5) Banking Days after a Senior Officer becomes aware of the existence of any condition or event which constitutes a Default or Event of Default, telephonic notice specifying the nature and period of existence thereof, and, no more than five (5) Banking Days after such telephonic notice, written notice again specifying the nature and period of existence thereof and specifying what action Borrower is taking or proposes to take with respect thereto;

(k) Promptly upon a Senior Officer becoming aware that (i) any Person has commenced a legal proceeding with respect to a claim against Borrower that is \$3,000,000 or more in excess of the amount thereof that is fully covered by insurance, (ii) any creditor under a credit agreement involving Indebtedness of \$1,000,000 or more or any lessor under a lease involving aggregate rent of \$1,000,000 or more has asserted a default thereunder on the part of Borrower or, (iii) any Person has commenced a legal proceeding with respect to a claim against Borrower under a contract that is not a credit agreement or material lease with respect to a claim of in excess of \$3,000,000 or which otherwise may reasonably be expected to result in a Material Adverse Effect, a written notice describing the pertinent facts relating thereto and what action Borrower is taking or proposes to take with respect thereto;

(l) Such other data and information as from time to time may be reasonably requested by the Administrative Agent, the Collateral Agent, any Lender (through the Administrative Agent) or the Requisite Lenders, to the extent reasonably available to Borrower;

(m) As soon as practicable, and in any event within 60 days after the end of each fiscal quarter of Immeon, the balance sheet of Immeon as at the end of such fiscal quarter of Immeon and the statements of operations and cash flows for such fiscal quarter of Immeon, and the portion of the fiscal year of Immeon ended with such fiscal quarter of Immeon, all in reasonable detail. Such financial statements shall be certified by the financial officer of Immeon or his or her designated representative as fairly presenting the financial condition, results of operations and cash flows of Immeon in accordance with GAAP (other than footnote disclosures), consistently applied, as at such date and for such periods, subject only to normal year-end accruals and audit adjustments; and

(n) As soon as practicable, and in any event not later than December 31st of each fiscal year of Immeon, a budget and projection by fiscal quarter of Immeon for the next succeeding fiscal year of Immeon, including projected balance sheets, statements of operations and statements of cash flow, forecast assumptions, and a budget for Capital Expenditures all in reasonable detail.

7.2 Additional Financial Reports. As soon as practicable, and in any event not later than 30 days after, and as of, the end of each month, the following financial reports,

each in form and substance reasonably satisfactory to the Collateral Agent: (i) an Accounts roll-forward report; (ii) an Inventory roll-forward report; (iii) an accounts payable aging report; and (iv) a sales summary schedule, quantifying unbilled receivables. In addition, as soon as practicable, and in any event not later than sixty (60) days after the end of each month, a contract status report, in form and substance reasonably satisfactory to the Collateral Agent.

7.3 Compliance Certificates. So long as any Advance remains unpaid or any portion of the Commitments remains outstanding, Borrower shall, at Borrower's sole expense, deliver to the Administrative Agent for distribution by it to the Lenders concurrently with the financial statements required pursuant to Sections 7.1(a) and 7.1(c), a Compliance Certificate signed by a Senior Officer or his or her designated representative.

7.4 Borrowing Base Certificate. So long as any Advance remains unpaid or any portion of the Commitment remains outstanding, Borrower shall, at Borrower's sole expense, deliver to the Collateral Agent for distribution by it to the Lenders concurrently with the Accounts Receivable Aging Report and the Accounts Receivable Reconciliation Report required by Section 7.1(e), a Borrowing Base Certificate signed by a Senior Officer or his or her designated representative.

Article 8.
CONDITIONS

8.1 Initial Credit Issuance. The obligation of each Lender to make the initial Credit Issuance is subject to the following conditions precedent, each of which shall be satisfied prior to the making of the initial Advances (unless all of the Lenders, in their sole and absolute discretion, shall agree otherwise):

(a) The Administrative Agent shall have received all of the following, each of which shall be originals unless otherwise specified, each properly executed by a Responsible Official of each party thereto, each dated as of the Closing Date and each in form and substance satisfactory to the Administrative Agent and its legal counsel (unless otherwise specified or, in the case of the date of any of the following, unless the Administrative Agent otherwise agrees or directs):

(1) at least one (1) executed counterpart of this Agreement, together with arrangements satisfactory to the Administrative Agent for additional executed counterparts, sufficient in number for distribution to the Lenders and Borrower;

(2) Revolving Notes executed by Borrower in favor of each Lender, each in a principal amount equal to that Lender's Pro Rata Share of the Revolving Commitment;

(3) the Subsidiary Guaranty executed by the Subsidiary Guarantors;

(4) the Security Agreement executed by Borrower and the Subsidiary Guarantors;

(5) such financing statements on Form UCC-1 with respect to the Security Agreement as the Collateral Agent may request;

(6) with respect to Borrower and the Subsidiary Guarantors, such documentation as the Administrative Agent may reasonably require to establish the due organization, valid existence and good standing of Borrower and the Subsidiary Guarantors, their qualification to engage in business in each material jurisdiction in which they are engaged in business or required to be so qualified, their authority to execute, deliver and perform the Loan Documents to which they are a Party, the identity, authority and capacity of each Responsible Official thereof authorized to act on their behalf, including certified copies of articles or certificates of incorporation and amendments thereto, bylaws and amendments thereto, certificates of good standing and/or qualification to engage in business, tax clearance certificates, certificates of corporate resolutions, incumbency certificates, Certificates of Responsible Officials, and the like;

(7) the Opinion of Counsel;

(8) a Certificate of Borrower, signed by the chief financial officer of Borrower or his or her designated representative, certifying that the representation contained in Section 4.17 is, to the best of his or her knowledge, true and correct;

(9) a Certificate of Borrower, executed by the chief financial officer of Borrower or his or her designated representative, certifying that the conditions specified in Sections 8.1(e) and 8.1(f) have been satisfied; and

(10) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the Collateral Agent or the Requisite Lenders reasonably may require.

(b) The fees payable on the Closing Date pursuant to Section 3.2 shall have been paid.

(c) The Collateral Agent shall be reasonably satisfied that it holds (or has the reasonable ability to hold) a first priority perfected Lien in the Collateral, for the ratable benefit of the Lenders, subject only to Permitted Encumbrances.

(d) The reasonable costs and expenses of the Administrative Agent and the Collateral Agent in connection with the preparation of the Loan Documents payable pursuant to Section 11.3, and invoiced to Borrower prior to the Closing Date (if applicable), shall have been (or shall concurrently be) paid.

(e) The representations and warranties of Borrower contained in Article 4 shall be true and correct in all material respects.

(f) Borrower and any other Parties shall be in compliance with all the terms and provisions of the Loan Documents, and giving effect to the initial Credit Issuance, no Default or Event of Default shall have occurred and be continuing.

(g) All legal matters relating to the Loan Documents shall be reasonably satisfactory to Sheppard, Mullin, Richter & Hampton LLP, special counsel to the Administrative Agent, and to counsel to the Collateral Agent.

8.2 Initial Advance Against Eligible Inventory. The obligation of each Lender to make the initial Advance on the basis of Borrower's Eligible Inventory shall be subject to the prior receipt by the Administrative Agent of a satisfactory appraisal of Borrower's Inventory.

8.3 Any Advance. The obligation of each Lender to make any Advance, and the obligation of the Issuing Lender to issue any Letter of Credit, is subject to the following conditions precedent (unless the Requisite Lenders, in their reasonable discretion, shall agree otherwise):

(a) except (i) for representations and warranties which expressly speak as of a particular date or are no longer true and correct as a result of a change which is permitted by this Agreement or (ii) as disclosed by Borrower and approved in writing by the Requisite Lenders, the representations and warranties contained in Article 4 (other than Sections 4.4, 4.6 (first sentence), 4.10 and 4.17) shall be true and correct in all material respects on and as of the date of the Advance as though made on that date;

(b) no circumstance or event shall have occurred that constitutes a Material Adverse Effect since the Closing Date;

(c) other than matters described in Schedule 4.10 or not required as of the Closing Date to be therein described, there shall not be then pending or threatened any action, suit, proceeding or investigation against or affecting Borrower or any of its Subsidiaries or any Property of any of them before any Governmental Agency that constitutes a Material Adverse Effect; and

(d) the Administrative Agent shall have timely received a Request for Loan (or telephonic or other request for Loan referred to in the second sentence of Section 2.1(c), if applicable), or a Request for Letter of Credit (as applicable), in compliance with Article 2.

Article 9.

EVENTS OF DEFAULT AND REMEDIES UPON EVENT OF DEFAULT

9.1 Events of Default. The existence or occurrence of any one or more of the following events, whatever the reason therefor and under any circumstances whatsoever, shall constitute an Event of Default:

(a) Borrower fails to pay any principal on any of the Notes, or any portion thereof, within five (5) days after the date when due; or

(b) Borrower fails to pay any interest on any of the Notes, or any fees under Sections 3.3, 3.4 or 3.5, or any portion thereof, within two (2) Banking Days after the date when due; or fails to pay any other fee or amount payable to the Lenders under any Loan Document, or any portion thereof, within two (2) Banking Days after demand therefor; or

(c) Borrower fails to comply with any of the covenants contained in Article 6 (other than Sections 6.8, 6.11, or 6.16); or

(d) Borrower fails to comply with Section 7.1(i) in any respect that has a Material Adverse Effect; or

(e) Borrower or any other Party fails to perform or observe any other covenant or agreement (not specified in clause (a), (b), (c) or (d) above) contained in any Loan Document on its part to be performed or observed within twenty (20) Banking Days after the giving of notice by the Administrative Agent on behalf of the Requisite Lenders of such Default or, if such Default is not reasonably susceptible of cure within such period, within such longer period as is reasonably necessary to effect a cure so long as such Borrower or such Party continues to diligently pursue cure of such Default but not in any event in excess of forty (40) Banking Days; or

(f) Any representation or warranty of Borrower or any other Party made in any Loan Document, or in any certificate or other writing delivered by Borrower or such Party pursuant to any Loan Document, proves to have been incorrect when made or reaffirmed in any respect has a Material Adverse Effect; or

(g) Borrower (i) fails to pay the principal, or any principal installment, of any present or future Indebtedness of \$500,000 or more, or any guaranty of present or future Indebtedness of \$500,000 or more, on its part to be paid, when due (or within any stated grace period), whether at the stated maturity, upon acceleration, by reason of required prepayment or otherwise or (ii) fails to perform or observe any other term, covenant or agreement on its part to be performed or observed, or suffers any event of default to occur, in connection with any present or future Indebtedness of \$500,000 or more, or of any guaranty of present or future Indebtedness of \$500,000 or more, if as a result of such failure or sufferance any holder or holders thereof (or an agent or trustee on its or their behalf) has the right to declare such Indebtedness due before the date on which it otherwise would become

due or the right to require Borrower to redeem or purchase, or offer to redeem or purchase, all or any portion of such Indebtedness; or

(h) Any Loan Document, at any time after its execution and delivery and for any reason other than the agreement or action (or omission to act) of the Administrative Agent, the Collateral Agent or the Lenders or satisfaction in full of all the Obligations, ceases to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, invalid or unenforceable in any respect which has a Material Adverse Effect; or any Collateral Document ceases (other than by action or inaction of the Collateral Agent or any Lender) to create a valid and effective Lien in any material portion of the Collateral; or any Party thereto denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind same; or

(i) A final judgment against Borrower is entered for the payment of money in excess of \$3,000,000 (not covered by insurance or for which an insurer has reserved its rights) and, absent procurement of a stay of execution, such judgment remains unsatisfied for thirty (30) calendar days after the date of entry of judgment, or in any event later than five (5) days prior to the date of any proposed sale thereunder; or any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the Property of Borrower and is not released, vacated or fully bonded within thirty (30) calendar days after its issue or levy; or

(j) Borrower institutes or consents to the institution of any proceeding under a Debtor Relief Law relating to it or to all or any material part of its Property, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its Property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of that Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under a Debtor Relief Law relating to any such Person or to all or any part of its Property is instituted without the consent of that Person and continues undismissed or unstayed for sixty (60) calendar days; or

(k) The occurrence of an Event of Default (as such term is or may hereafter be specifically defined in any other Loan Document) under any other Loan Document; or

(l) Any holder of a Subordinated Obligation of more than \$1,000,000 asserts in writing that such Subordinated Obligation is not subordinated to the Obligations in accordance with its terms and Borrower does not promptly deny in writing such assertion and contest any attempt by such holder to take action based on such assertion; or

(m) Any Pension Plan maintained by Borrower is finally determined by the PBGC to have a material "accumulated funding deficiency" as that term is defined in Section 302 of ERISA in excess of an amount equal to 5% of the consolidated total assets of Borrower as of the most-recently ended Fiscal Quarter; or

(n) The Requisite Lenders reasonably determine in good faith that a circumstance or event has occurred that constitutes a Material Adverse Effect; or

(o) A Change in Control occurs.

9.2 Remedies Upon Event of Default. Without limiting any other rights or remedies of the Administrative Agent, the Collateral Agent or the Lenders provided for elsewhere in this Agreement, or the other Loan Documents, or by applicable Law, or in equity, or otherwise:

(a) Upon the occurrence, and during the continuance, of any Event of Default other than an Event of Default described in Section 9.1(j):

(1) the Commitments to make Advances and all other obligations of the Administrative Agent or the Lenders and all rights of Borrower and any other Parties under the Loan Documents shall be suspended without notice to or demand upon Borrower, which are expressly waived by Borrower, except that all of the Lenders or the Requisite Lenders (as the case may be, in accordance with Section 11.2) may waive an Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Lenders or Requisite Lenders, as the case may be, to reinstate the Commitments and such other obligations and rights and make further Advances, which waiver or determination shall apply equally to, and shall be binding upon, all the Lenders;

(2) the Issuing Lender may, with the approval of the Administrative Agent on behalf of the Requisite Lenders, demand immediate payment by Borrower of an amount equal to the aggregate amount of all outstanding Letters of Credit to be held by the Issuing Lender in an interest-bearing cash collateral account as collateral hereunder; and

(3) the Requisite Lenders may request the Administrative Agent to, and the Administrative Agent thereupon shall, terminate the Commitments and/or declare all or any part of the unpaid principal of all Notes, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by Borrower.

(b) Upon the occurrence of any Event of Default described in Section 9.1(j):

(1) the Commitments to make Advances and all other obligations of the Administrative Agent, the Collateral Agent or the Lenders and all rights of Borrower and any other Parties under the Loan Documents shall terminate without notice to or demand upon Borrower, which are expressly waived by Borrower, except that all of the Lenders may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to all the Lenders, to reinstate the Commitments and such other obligations and rights and make further Advances, which determination shall apply equally to, and shall be binding upon, all the Lenders;

(2) an amount equal to the aggregate amount of all outstanding Letters of Credit shall be immediately due and payable to the Issuing Lender without notice to or demand upon Borrower, which are expressly waived by Borrower, to be held by the Issuing Lender in an interest-bearing cash collateral account as collateral hereunder; and

(3) the unpaid principal of all Notes, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents shall be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by Borrower.

(c) Upon the occurrence of any Event of Default, the Lenders, the Administrative Agent and the Collateral Agent, or any of them, without notice to (except as expressly provided for in any Loan Document) or demand upon Borrower, which are expressly waived by Borrower (except as to notices expressly provided for in any Loan Document), may proceed (but only with the consent of the Requisite Lenders) to protect, exercise and enforce their rights and remedies under the Loan Documents against Borrower and any other Party and such other rights and remedies as are provided by Law or equity.

(d) The order and manner in which the Lenders' rights and remedies are to be exercised shall be determined by the Requisite Lenders in their sole discretion, and all payments received by the Administrative Agent, the Collateral Agent and the Lenders, or any of them, shall be applied first to the costs and expenses (including reasonable attorneys' fees and disbursements and the reasonably allocated costs of attorneys employed by the Administrative Agent, the Collateral Agent or by any Lender) of the Administrative Agent, the Collateral Agent and the Lenders, and thereafter paid pro rata to the Lenders in the same proportions that the aggregate Obligations owed to each Lender under the Loan Documents bear to the aggregate Obligations owed under the Loan Documents to all the Lenders, without priority or preference among the Lenders. Regardless of how each Lender may treat payments for the purpose of its own accounting, for the purpose of computing Borrower's Obligations hereunder and under the Notes, payments shall be applied first, to the costs and expenses of the Administrative Agent, the Collateral Agent and the Lenders, as set forth above, second, to the payment of accrued and unpaid interest due under any Loan Documents to and including the date of such application (ratably, and

without duplication, according to the accrued and unpaid interest due under each of the Loan Documents), and third, to the payment of all other amounts (including principal and fees) then owing to the Administrative Agent, the Collateral Agent or the Lenders under the Loan Documents. No application of payments will cure any Event of Default (other than an Event of Default caused by a failure to pay), or prevent acceleration, or continued acceleration, of amounts payable under the Loan Documents, or prevent the exercise, or continued exercise, of rights or remedies of the Lenders hereunder or thereunder or at Law or in equity.

Article 10.

THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

10.1 Appointment and Authorization. Subject to Section 10.8, each Lender hereby irrevocably appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to the Administrative Agent or the Collateral Agent by the terms thereof or are reasonably incidental, as determined by the Administrative Agent or the Collateral Agent, thereto. This appointment and authorization is intended solely for the purpose of facilitating the servicing of the Loans and the administration of the Collateral and does not constitute appointment of the Administrative Agent or the Collateral Agent as trustee for any Lender or as representative of any Lender for any other purpose and, except as specifically set forth in the Loan Documents to the contrary, the Administrative Agent and the Collateral Agent shall take such action and exercise such powers only in an administrative and ministerial capacity.

10.2 The Agents and Their Affiliates. UBOC (and each successor Administrative Agent) and Comerica (and each successor Collateral Agent) have the same rights and powers under the Loan Documents as any other Lender and may exercise the same as though they were not the Administrative Agent and the Collateral Agent, respectively, and the term "Lender" or "Lenders" includes UBOC and Comerica in their individual capacities. UBOC (and each successor Administrative Agent) and Comerica (and each successor Collateral Agent) have and their respective Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with Borrower, any Subsidiary thereof, or any Affiliate of Borrower or any Subsidiary thereof, as if they were not the Administrative Agent and the Collateral Agent, respectively, and without any duty to account therefor to the Lenders. Union Bank of California, N.A. (and each successor Administrative Agent) and Comerica (and each successor Collateral Agent) need not account to any other Lender for any monies received by them for reimbursement of their costs and expenses as Administrative Agent or Collateral Agent hereunder, or (subject to Section 11.10) for any monies received by them in their capacity as Lenders hereunder. Neither the Administrative Agent nor the Collateral Agent shall be deemed to hold a fiduciary relationship with any Lender and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent or the Collateral Agent.

10.3 Proportionate Interest in any Collateral. The Collateral Agent, on behalf of all the Lenders, shall hold in accordance with the Loan Documents all items of any collateral or interests therein received or held by the Collateral Agent. Subject to the Collateral Agent's, the Administrative Agent's and the Lenders' rights to reimbursement for their costs and expenses hereunder (including reasonable attorneys' fees and disbursements and other professional services and the reasonably allocated costs of attorneys employed by the Collateral Agent, the Administrative Agent or a Lender) and subject to the application of payments in accordance with Section 9.2(d), each Lender shall have an interest in the Lenders' interest in such collateral or interests therein in the same proportions that the aggregate Obligations owed such Lender under the Loan Documents bear to the aggregate Obligations owed

under the Loan Documents to all the Lenders, without priority or preference among the Lenders.

10.4 Lenders' Credit Decisions. Each Lender agrees that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent, any other Lender or the directors, officers, agents, employees or attorneys of the Administrative Agent, the Collateral Agent or of any other Lender, and instead in reliance upon information supplied to it by or on behalf of Borrower and upon such other information as it has deemed appropriate, made its own independent credit analysis and decision to enter into this Agreement. Each Lender also agrees that it shall, independently and without reliance upon the Administrative Agent, the Collateral Agent any other Lender or the directors, officers, agents, employees or attorneys of the Administrative Agent, the Collateral Agent or of any other Lender, continue to make its own independent credit analyses and decisions in acting or not acting under the Loan Documents.

10.5 Action by Administrative Agent and Collateral Agent.

(a) Absent actual knowledge of the Administrative Agent or the Collateral Agent of the existence of a Default, the Administrative Agent and the Collateral Agent may assume that no Default has occurred and is continuing, unless the Administrative Agent or the Collateral Agent (or the Lender that is then the Administrative Agent or the Collateral Agent) has received notice from Borrower stating the nature of the Default or has received notice from a Lender stating the nature of the Default and that such Lender considers the Default to have occurred and to be continuing.

(b) The Administrative Agent and the Collateral Agent have only those obligations under the Loan Documents as are expressly set forth therein.

(c) Except for any obligation expressly set forth in the Loan Documents and as long as the Administrative Agent and the Collateral Agent may assume that no Event of Default has occurred and is continuing, the Administrative Agent and the Collateral Agent may, but shall not be required to, exercise its reasonable discretion to act or not act, except that the Administrative Agent and the Collateral Agent shall be required to act or not act upon the instructions of the Requisite Lenders (or of all the Lenders, to the extent required by Section 11.2) and those instructions shall be binding upon the Administrative Agent, the Collateral Agent and all the Lenders, provided that the Administrative Agent and the Collateral Agent shall not be required to act or not act if to do so would be contrary to any Loan Document or to applicable Law or would result, in the reasonable judgment of the Administrative Agent or the Collateral Agent, in substantial risk of liability to the Administrative Agent or the Collateral Agent.

(d) If the Administrative Agent or the Collateral Agent has received a notice specified in clause (a), the Administrative Agent or the Collateral Agent shall immediately give notice thereof to the Lenders and shall act or not act upon the instructions of the Requisite Lenders (or of all the Lenders, to the extent required by

Section 11.2), provided that the Administrative Agent or the Collateral Agent shall not be required to act or not act if to do so would be contrary to any Loan Document or to applicable Law or would result, in the reasonable judgment of the Administrative Agent or the Collateral Agent, in substantial risk of liability to the Administrative Agent or the Collateral Agent, and except that if the Requisite Lenders (or all the Lenders, if required under Section 11.2) fail, for five (5) Banking Days after the receipt of notice from the Administrative Agent, to instruct the Administrative Agent or the Collateral Agent, then the Administrative Agent or the Collateral Agent, in its sole discretion, may act or not act as it deems advisable for the protection of the interests of the Lenders.

(e) The Administrative Agent and the Collateral Agent shall have no liability to any Lender for acting, or not acting, as instructed by the Requisite Lenders (or all the Lenders, if required under Section 11.2), notwithstanding any other provision hereof.

10.6 Liability of Agents. Neither the Administrative Agent, the Collateral Agent, nor any directors, officers, agents, employees or attorneys of the Administrative Agent or the Collateral Agent shall be liable for any action taken or not taken by them under or in connection with the Loan Documents, except for their own gross negligence or willful misconduct. Without limitation on the foregoing, the Administrative Agent, the Collateral Agent and their respective directors, officers, agents, employees and attorneys:

(a) May treat the payee of any Note as the holder thereof until the Administrative Agent or the Collateral Agent receives notice of the assignment or transfer thereof, in form satisfactory to the Administrative Agent or the Collateral Agent, signed by the payee, and may treat each Lender as the owner of that Lender's interest in the Obligations for all purposes of this Agreement until the Administrative Agent or the Collateral Agent receives notice of the assignment or transfer thereof, in form satisfactory to the Administrative Agent or the Collateral Agent, signed by that Lender;

(b) May consult with legal counsel (including in-house legal counsel), accountants (including in-house accountants) and other professionals or experts selected by it, or with legal counsel, accountants or other professionals or experts for Borrower and/or their Subsidiaries or the Lenders, and shall not be liable for any action taken or not taken by it in good faith in accordance with any reasonable advice of such legal counsel, accountants or other professionals or experts selected by it with reasonable care;

(c) Shall not be responsible to any Lender for any statement, warranty or representation made in any of the Loan Documents or in any notice, certificate, report, request or other statement (written or oral) given or made in connection with any of the Loan Documents except for those expressly made by it;

(d) Except to the extent expressly set forth in the Loan Documents, shall have no duty to ask or inquire as to the performance or observance by Borrower

or its Subsidiaries of any of the terms, conditions or covenants of any of the Loan Documents or to inspect any collateral or any Property, books or records of Borrower or its Subsidiaries;

(e) Will not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, effectiveness, sufficiency or value of any Loan Document, any other instrument or writing furnished pursuant thereto or in connection therewith, or any Collateral;

(f) Will not incur any liability by acting or not acting in reliance upon any Loan Document, notice, consent, certificate, statement, request or other instrument or writing reasonably believed by it to be genuine and signed or sent by the proper party or parties; and

(g) Will not incur any liability for any arithmetical error in computing any amount paid or payable by Borrower or any Subsidiary or Affiliate thereof or paid or payable to or received or receivable from any Lender under any Loan Document, including, without limitation, principal, interest, commitment fees, Advances and other amounts; provided that such error was not the result of gross negligence or willful misconduct and provided further that, promptly upon discovery of such an error in computation, the Administrative Agent, the Collateral Agent, the Lenders and (to the extent applicable) Borrower and/or its Subsidiaries or Affiliates shall make such adjustments as are necessary to correct such error and to restore the parties to the position that they would have occupied had the error not occurred.

10.7 Indemnification. Each Lender shall, ratably in accordance with its Pro Rata Share of the Commitments (if the Commitments are then in effect) or in accordance with its proportion of the aggregate Indebtedness then evidenced by the Notes (if the Commitments have then been terminated), indemnify and hold the Administrative Agent, the Collateral Agent and their respective directors, officers, agents, employees and attorneys harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including reasonable attorneys' fees and disbursements and allocated costs of attorneys employed by the Administrative Agent or the Collateral Agent) that may be imposed on, incurred by or asserted against it or them in any way relating to or arising out of the Loan Documents (other than losses incurred by reason of the failure of Borrower to pay the Indebtedness represented by the Notes) or any action taken or not taken by it as Administrative Agent or Collateral Agent thereunder, except such as result from its own gross negligence or willful misconduct. Without limitation on the foregoing, each Lender shall reimburse the Administrative Agent or Collateral Agent upon demand for that Lender's Pro Rata Share of any reasonable out-of-pocket cost or expense incurred by the Administrative Agent or the Collateral Agent in connection with the negotiation, preparation, execution, delivery, amendment, waiver, restructuring, reorganization (including a bankruptcy reorganization), enforcement or attempted enforcement of the Loan Documents, to the extent that Borrower or any other Party is required by Section 11.3 to pay that cost or expense but fails to do so upon demand. Nothing in this Section 10.7 shall entitle the Administrative Agent, the Collateral Agent or any indemnitee referred to above to recover any amount from the Lenders if and to the extent

that such amount has theretofore been recovered from Borrower or any of its Subsidiaries. To the extent that the Administrative Agent, the Collateral Agent or any indemnitee referred to above is later reimbursed such amount by Borrower or any of its Subsidiaries, it shall return the amounts paid to it by the Lenders in respect of such amount.

10.8 Successor Agents. The Administrative Agent and the Collateral Agent may, and at the request of the Requisite Lenders shall, resign as Administrative Agent or Collateral Agent upon reasonable notice to the Lenders and Borrower effective upon acceptance of appointment by a successor Administrative Agent or Collateral Agent. If the Administrative Agent or Collateral Agent shall resign as Administrative Agent or Collateral Agent under this Agreement, the Requisite Lenders shall appoint from among the Lenders a successor Administrative Agent or Collateral Agent for the Lenders, which successor Administrative Agent or Collateral Agent shall be approved by Borrower (and such approval shall not be unreasonably withheld or delayed). If no successor Administrative Agent or Collateral Agent is appointed prior to the effective date of the resignation of the Administrative Agent or Collateral Agent, the Administrative Agent or Collateral Agent may appoint, after consulting with the Lenders and Borrower, a successor Administrative Agent or Collateral Agent from among the Lenders. Upon the acceptance of its appointment as successor Administrative Agent or Collateral Agent hereunder, such successor Administrative Agent or Collateral Agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent or Collateral Agent and the term "Administrative Agent" or "Collateral Agent" shall mean such successor Administrative Agent or Collateral Agent and the retiring Administrative Agent's or Collateral Agent's appointment, powers and duties as Administrative Agent or Collateral Agent shall be terminated. After any retiring Administrative Agent's or Collateral Agent's resignation hereunder as Administrative Agent or Collateral Agent, the provisions of this Article 10, and Sections 11.3, 11.11 and 11.22, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or Collateral Agent under this Agreement. Notwithstanding the foregoing, if (a) the Administrative Agent or Collateral Agent has not been paid its agency fees under Section 3.4 or has not been reimbursed for any expense reimbursable to it under Section 11.3, in either case for a period of at least one (1) year and (b) no successor Administrative Agent or Collateral Agent has accepted appointment as Administrative Agent or Collateral Agent by the date which is thirty (30) days following a retiring Administrative Agent's or Collateral Agent's notice of resignation, the retiring Administrative Agent's or Collateral Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent or Collateral Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Administrative Agent or Collateral Agent as provided for above.

10.9 No Obligations of Borrower. Nothing contained in this Article 10 shall be deemed to impose upon Borrower any obligation in respect of the due and punctual performance by the Administrative Agent or the Collateral Agent of its obligations to the Lenders under any provision of this Agreement, and Borrower shall have no liability to the Administrative Agent, the Collateral Agent or any of the Lenders in respect of any failure by the Administrative Agent, the Collateral Agent or any Lender to perform any of its obligations to the Administrative Agent, the Collateral Agent or the Lenders under this Agreement. Without limiting the generality of the foregoing, where any provision of this Agreement

relating to the payment of any amounts due and owing under the Loan Documents provides that such payments shall be made by Borrower to the Administrative Agent for the account of the Lenders, Borrower's obligations to the Lenders in respect of such payments shall be deemed to be satisfied upon the making of such payments to the Administrative Agent in the manner provided by this Agreement. In addition, Borrower may rely on a written statement by the Administrative Agent to the effect that it has obtained the written consent of the Requisite Lenders or all of the Lenders, as applicable under Section 11.2, in connection with a waiver, amendment, consent, approval or other action by the Lenders hereunder, and shall have no obligation to verify or confirm the same.

Article 11.
MISCELLANEOUS

11.1 Cumulative Remedies; No Waiver. The rights, powers, privileges and remedies of the Administrative Agent, the Collateral Agent and the Lenders provided herein or in any Note or other Loan Document are cumulative and not exclusive of any right, power, privilege or remedy provided by Law or equity. No failure or delay on the part of the Administrative Agent, Collateral Agent or any Lender in exercising any right, power, privilege or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy. The terms and conditions of Article 8 hereof are inserted for the sole benefit of the Administrative Agent, the Collateral Agent and the Lenders; the same may be waived in whole or in part, with or without terms or conditions, in respect of any Loan without prejudicing the Administrative Agent's or the Collateral Agent's or the Lenders' rights to assert them in whole or in part in respect of any other Loan.

11.2 Amendments; Consents. No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, and no consent to any departure by Borrower or any other Party therefrom, may in any event be effective unless in writing signed by the Administrative Agent with the written approval of the Requisite Lenders (and, in the case of any amendment, modification or supplement of or to any Loan Document to which Borrower is a Party, signed by Borrower, and, in the case of any amendment, modification or supplement to Article 10, signed by the Administrative Agent), and then only in the specific instance and for the specific purpose given; and, without the approval in writing of all the Lenders, no amendment, modification, supplement, termination, waiver or consent may be effective:

(a) To amend or modify the principal of, or the amount of principal, principal prepayments or the rate of interest payable on, any Note, or the amount of the Commitments or the Pro Rata Share of any Lender or the amount of any commitment fee payable to any Lender, or any other fee or amount payable to any Lender under the Loan Documents or to waive an Event of Default consisting of the failure of Borrower to pay when due principal, interest or any fee;

(b) To postpone any date fixed for any payment of principal of, prepayment of principal of or any installment of interest on, any Note or any installment of any fee, or to extend the term of the Commitments;

(c) To amend the provisions of the definition of "Requisite Lenders" or "Revolving Loan Maturity Date"; or

(d) To release any Subsidiary Guarantor from the Subsidiary Guaranty or to release any Collateral from the Lien of the Collateral Documents, except if such release of Collateral occurs in connection with a Disposition permitted

under Section 6.2, in which case such release shall not require the consent of any of the Lenders; or

(e) To amend or waive Section 8.1 or this Section 11.2; or

(f) To amend any provision of this Agreement that expressly requires the consent or approval of all or a specified portion of the Lenders.

Any amendment, modification, supplement, termination, waiver or consent pursuant to this Section 11.2 shall apply equally to, and shall be binding upon, all the Lenders, the Administrative Agent and the Collateral Agent.

11.3 Costs, Expenses and Taxes. Borrower shall pay within five (5) Banking Days after demand, accompanied by an invoice therefor, the reasonable costs and expenses of the Administrative Agent incurred in connection with the negotiation, preparation, syndication, execution and delivery of the Loan Documents. Borrower shall also pay on demand, accompanied by an invoice therefor, the reasonable costs and expenses of the Administrative Agent, the Collateral Agent, and the Lenders in connection with each amendment of or waiver relating to the Loan Documents and in connection with the refinancing, restructuring, reorganization (including a bankruptcy reorganization) and enforcement or attempted enforcement of the Loan Documents, and any matter related thereto. The foregoing costs and expenses shall include filing fees, recording fees, title insurance fees, appraisal fees, search fees, and other out-of-pocket expenses, and the reasonable fees and out-of-pocket expenses of any legal counsel (including reasonably allocated costs of legal counsel employed by the Administrative Agent, the Collateral Agent, or any Lender), independent public accountants and other outside experts retained by the Administrative Agent, the Collateral Agent, or any Lender, whether or not such costs and expenses are incurred or suffered by the Administrative Agent, the Collateral Agent, or any Lender in connection with or during the course of any bankruptcy or insolvency proceedings of Borrower or any of its Subsidiaries. Borrower shall pay any and all documentary and other taxes, excluding (i) taxes imposed on or measured in whole or in part by a Lender's overall net income imposed on it by (A) any jurisdiction (or political subdivision thereof) in which it is organized or maintains its principal office or Eurodollar Lending Office or (B) any jurisdiction (or political subdivision thereof) in which it is "doing business" or (ii) any withholding taxes or other taxes based on gross income imposed by the United States of America for any period with respect to which it has failed to provide Borrower with the appropriate form or forms required by Section 11.21, to the extent such forms are then required by applicable Laws, and all costs, expenses, fees and charges payable or determined to be payable in connection with the filing or recording of this Agreement, any other Loan Document or any other instrument or writing to be delivered hereunder or thereunder, or in connection with any transaction pursuant hereto or thereto, and shall reimburse, hold harmless and indemnify on the terms set forth in 11.11 the Administrative Agent, the Collateral Agent, and the Lenders from and against any and all loss, liability or legal or other expense with respect to or resulting from any delay in paying or failure to pay any such tax, cost, expense, fee or charge or that any of them may suffer or incur by reason of the failure of any Party to perform any of its Obligations. Any amount payable to the Administrative

Agent, the Collateral Agent, or any Lender under this Section 11.3 shall bear interest from the fifth Banking Day following the date of demand for payment at the Default Rate.

11.4 Nature of Lenders' Obligations. The obligations of the Lenders hereunder are several and not joint or joint and several. Nothing contained in this Agreement or any other Loan Document and no action taken by the Administrative Agent, the Collateral Agent, or the Lenders or any of them pursuant hereto or thereto may, or may be deemed to, make the Lenders a partnership, an association, a joint venture or other entity, either among themselves or with the Borrower or any Affiliate of Borrower. A default by any Lender will not increase the Pro Rata Share of the Commitments attributable to any other Lender. Any Lender not in default may, if it desires, assume in such proportion as the nondefaulting Lenders agree the obligations of any Lender in default, but is not obligated to do so. The Administrative Agent agrees that it will use its best efforts either to induce promptly the other Lenders to assume the obligations of a Lender in default or to obtain promptly another Lender, reasonably satisfactory to Borrower, to replace such a Lender in default.

11.5 Survival of Representations and Warranties. All representations and warranties contained herein or in any other Loan Document, or in any certificate or other writing delivered by or on behalf of any one or more of the Parties to any Loan Document, will survive the making of the Loans hereunder and the execution and delivery of the Notes, and have been or will be relied upon by the Administrative Agent, the Collateral Agent, and each Lender, notwithstanding any investigation made by the Administrative Agent, the Collateral Agent, or any Lender or on their behalf.

11.6 Notices. Except as otherwise expressly provided in the Loan Documents, all notices, requests, demands, directions and other communications provided for hereunder or under any other Loan Document must be in writing and must be mailed, telegraphed, telecopied, dispatched by commercial courier or delivered to the appropriate party at the address set forth on the signature pages of this Agreement or other applicable Loan Document or, as to any party to any Loan Document, at any other address as may be designated by it in a written notice sent to all other parties to such Loan Document in accordance with this Section. Except as otherwise expressly provided in any Loan Document, if any notice, request, demand, direction or other communication required or permitted by any Loan Document is given by mail it will be effective on the earlier of receipt or the fourth Banking Day after deposit in the United States mail with first class or airmail postage prepaid; if given by telegraph or cable, when delivered to the telegraph company with charges prepaid; if given by telecopier, when sent; if dispatched by commercial courier, on the scheduled delivery date; or if given by personal delivery, when delivered.

11.7 Execution of Loan Documents. Unless the Administrative Agent otherwise specifies with respect to any Loan Document, (a) this Agreement and any other Loan Document may be executed in any number of counterparts and any party hereto or thereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Agreement or any other Loan Document, as the case may be, when taken together will be deemed to be but one and the same instrument and (b) execution of any such counterpart may be evidenced by a telecopier transmission of the signature of such party. The execution of this Agreement or any other

Loan Document by any party hereto or thereto will not become effective until counterparts hereof or thereof, as the case may be, have been executed by all the parties hereto or thereto.

11.8 Binding Effect; Assignment.

(a) This Agreement and the other Loan Documents to which Borrower is a Party will be binding upon and inure to the benefit of Borrower, the Administrative Agent, the Collateral Agent, each of the Lenders, and their respective successors and assigns, except that Borrower may not assign its rights hereunder or thereunder or any interest herein or therein without the prior written consent of all the Lenders. Each Lender represents that it is not acquiring its Note with a view to the distribution thereof within the meaning of the Securities Act of 1933, as amended (subject to any requirement that disposition of such Note must be within the control of such Lender). Any Lender may at any time pledge its Note or any other instrument evidencing its rights as a Lender under this Agreement to a Federal Reserve Bank, but no such pledge shall release that Lender from its obligations hereunder or grant to such Federal Reserve Bank the rights of a Lender hereunder absent foreclosure of such pledge.

(b) From time to time following the Closing Date, each Lender may assign to one or more Eligible Assignees all or any portion of its Pro Rata Share of the Commitments; provided that (i) such Eligible Assignee, if not then a Lender or an Affiliate of the assigning Lender, shall be approved by the Administrative Agent and (if no Event of Default then exists) Borrower (neither of which approvals shall be unreasonably withheld or delayed), (ii) such assignment shall be evidenced by a Commitment Assignment and Acceptance, a copy of which shall be furnished to the Administrative Agent as hereinbelow provided, (iii) except in the case of an assignment to an Affiliate of the assigning Lender, to another Lender or of the entire remaining Commitments of the assigning Lender, the assignment shall not assign a Pro Rata Share of the Commitments that is equivalent to less than \$5,000,000 and (iv) the effective date of any such assignment shall be as specified in the Commitment Assignment and Acceptance, but not earlier than the date which is five (5) Banking Days after the date the Administrative Agent has received the Commitment Assignment and Acceptance. Upon the effective date of such Commitment Assignment and Acceptance, the Eligible Assignee named therein shall be a Lender for all purposes of this Agreement, with the Pro Rata Share of the Commitments therein set forth and, to the extent of such Pro Rata Share, the assigning Lender shall be released from its further obligations under this Agreement. Borrower agrees that it shall execute and deliver (against delivery by the assigning Lender to Borrower of its Notes) to such assignee Lender, Notes evidencing that assignee Lender's Pro Rata Share of the Commitments, and to the assigning Lender, Notes evidencing the remaining balance Pro Rata Share retained by the assigning Lender.

(c) By executing and delivering a Commitment Assignment and Acceptance, the Eligible Assignee thereunder acknowledges and agrees that: (i) other than the representation and warranty that it is the legal and beneficial owner of the Pro Rata Share of the Commitments being assigned thereby free and clear of any adverse

claim, the assigning Lender has made no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness or sufficiency of this Agreement or any other Loan Document; (ii) the assigning Lender has made no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance by Borrower of the Obligations; (iii) it has received a copy of this Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.1 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Commitment Assignment and Acceptance; (iv) it will, independently and without reliance upon the Administrative Agent, the Collateral Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) it appoints and authorizes the Administrative Agent and the Collateral Agent to take such action and to exercise such powers under this Agreement as are delegated to the Administrative Agent and the Collateral Agent by this Agreement; and (vi) it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent shall maintain at the Administrative Agent's Office a copy of each Commitment Assignment and Acceptance delivered to it and a register (the "Register") of the names and address of each of the Lenders and the Pro Rata Share of the Commitments held by each Lender, giving effect to each Commitment Assignment and Acceptance. The Register shall be available during normal business hours for inspection by Borrower or any Lender upon reasonable prior notice to the Administrative Agent. After receipt of a completed Commitment Assignment and Acceptance executed by any Lender and an Eligible Assignee, and receipt of an assignment fee of \$3,000 from such Lender or Eligible Assignee, the Administrative Agent shall, promptly following the effective date thereof, provide to Borrower and the Lenders a revised Schedule 1.1 giving effect thereto. Borrower, the Administrative Agent, the Collateral Agent and the Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the Pro Rata Share of the Commitments listed therein for all purposes hereof, and no assignment or transfer of any such Pro Rata Share of the Commitments shall be effective, in each case unless and until a Commitment Assignment and Acceptance effecting the assignment or transfer thereof shall have been accepted by the Administrative Agent and recorded in the Register as provided above. Prior to such recordation, all amounts owed with respect to the applicable Pro Rata Share of the Commitments shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Pro Rata Share of the Commitments.

(e) Each Lender may from time to time grant participations to one or more banks or other financial institutions in a portion of its Pro Rata Share of the

Commitments; provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other financial institutions shall not be a Lender hereunder for any purpose except, if the participation agreement so provides, for the purposes of Sections 3.6, 3.7, 11.11 and 11.22 but only to the extent that the cost of such benefits to Borrower does not exceed the cost which Borrower would have incurred in respect of such Lender absent the participation, (iv) Borrower, the Administrative Agent, the Collateral Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, (v) the participation interest shall be expressed as a percentage of the granting Lender's Pro Rata Share of the Commitments as it then exists and shall not restrict an increase in the Commitments, or in the granting Lender's Pro Rata Share of the Commitments, so long as the amount of the participation interest is not affected thereby, (vi) the holder of the participation interest shall abide by the confidentiality provisions set forth herein and (vii) the consent of the holder of such participation interest shall not be required for amendments or waivers of provisions of the Loan Documents other than those which (A) extend the Revolving Loan Maturity Date or any other date upon which any payment of money is due to the Lenders, (B) reduce the rate of interest on the Notes, any fee or any other monetary amount payable to the Lenders, (C) reduce the amount of any installment of principal due under the Notes, (D) release any Subsidiary Guaranty, or (E) release any Collateral from the Lien of the Collateral Documents, except if such release of Collateral occurs in connection with a Disposition permitted under Section 6.2, in which case such release shall not require the consent of any of the Lenders or of any holder of a participation interest in the Commitments.

11.9 Right of Setoff. If an Event of Default has occurred and is continuing, the Administrative Agent, the Collateral Agent or any Lender (but in each case only with the consent of the Requisite Lenders) may exercise its rights under Article 9 of the Uniform Commercial Code and other applicable Laws and, to the extent permitted by applicable Laws, apply any funds in any deposit account maintained with it by Borrower and/or any Property of Borrower in its possession against the Obligations.

11.10 Sharing of Setoffs. Each Lender severally agrees that if it, through the exercise of any right of setoff, banker's lien or counterclaim against Borrower, or otherwise, receives payment of the Obligations held by it that is ratably more than any other Lender, through any means, receives in payment of the Obligations held by that Lender, then, subject to applicable Laws: (a) the Lender exercising the right of setoff, banker's lien or counterclaim or otherwise receiving such payment shall purchase, and shall be deemed to have simultaneously purchased, from each of the other Lenders a participation in the Obligations held by the other Lenders and shall pay to the other Lenders a purchase price in an amount so that the share of the Obligations held by each Lender after the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment shall be in the same proportion that existed prior to the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment; and (b) such other adjustments and purchases of participations shall be made from time to time as shall be equitable to ensure that all of the Lenders share any payment obtained

in respect of the Obligations ratably in accordance with each Lender's share of the Obligations immediately prior to, and without taking into account, the payment; provided that, if all or any portion of a disproportionate payment obtained as a result of the exercise of the right of setoff, banker's lien, counterclaim or otherwise is thereafter recovered from the purchasing Lender by Borrower or any Person claiming through or succeeding to the rights of Borrower, the purchase of a participation shall be rescinded and the purchase price thereof shall be restored to the extent of the recovery, but without interest. Each Lender that purchases a participation in the Obligations pursuant to this Section 11.10 shall from and after the purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in an Obligation so purchased pursuant to this Section 11.10 may exercise any and all rights of setoff, banker's lien or counterclaim with respect to the participation as fully as if the Lender were the original owner of the Obligation purchased.

11.11 Indemnity by Borrower. Borrower agrees to indemnify, save and hold harmless the Administrative Agent, the Collateral Agent, and each Lender and their respective directors, officers, agents, attorneys and employees (collectively the "Indemnitees") from and against: (a) any and all claims, demands, actions or causes of action (except a claim, demand, action, or cause of action for any amount excluded from the definition of "Taxes" in Section 3.12(d)) if the claim, demand, action or cause of action arises out of or relates to any act or omission (or alleged act or omission) of Borrower, its Affiliates or any of its officers, directors or stockholders relating to the Commitment, the use or contemplated use of proceeds of any Loan, or the relationship of Borrower and the Lenders under this Agreement; (b) any administrative or investigative proceeding by any Governmental Agency arising out of or related to a claim, demand, action or cause of action described in clause (a) above; and (c) any and all liabilities, losses, reasonable costs or expenses (including reasonable attorneys' fees and the reasonably allocated costs of attorneys employed by any Indemnitee and disbursements of such attorneys and other professional services) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action or cause of action; provided that no Indemnitee shall be entitled to indemnification for any loss caused by its own gross negligence or willful misconduct or for any loss asserted against it by another Indemnitee. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify Borrower, but the failure to so promptly notify Borrower shall not affect Borrower's obligations under this Section unless such failure materially prejudices Borrower's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. Such Indemnitee may (and shall, if requested by Borrower in writing) contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Borrower to participate in such contest. Such Indemnitee shall act reasonably and in good faith in dealing with such claim, demand, action or cause of action, including in electing whether to offer or accept any settlement or compromise of such claim, demand, action or cause of action. Borrower shall have the burden of establishing the lack of good faith or reasonableness of such Indemnitee. Any Indemnitee that proposes to settle or compromise any claim or proceeding for which Borrower may be liable for payment of indemnity hereunder shall give Borrower written notice of the terms of such proposed settlement or compromise reasonably in advance of

settling or compromising such claim or proceeding and shall obtain Borrower's prior written consent (which shall not be unreasonably withheld or delayed). In connection with any claim, demand, action or cause of action covered by this Section 11.11 against more than one Indemnitee, all such Indemnitees shall be represented by the same legal counsel (which may be a law firm engaged by the Indemnitees or attorneys employed by an Indemnitee or a combination of the foregoing) selected by the Indemnitees and reasonably acceptable to Borrower; provided, that if such legal counsel determines in good faith that representing all such Indemnitees would or could result in a conflict of interest under Laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to an Indemnitee that is not available to all such Indemnitees, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each affected Indemnitee shall be entitled to separate representation by legal counsel selected by that Indemnitee and reasonably acceptable to Borrower, with all such legal counsel using reasonable efforts to avoid unnecessary duplication of effort by counsel for all Indemnitees; and further provided that the Administrative Agent (as an Indemnitee) shall at all times be entitled to representation by separate legal counsel (which may be a law firm or attorneys employed by the Administrative Agent or a combination of the foregoing). Any obligation or liability of Borrower to any Indemnitee under this Section 11.11 shall survive the expiration or termination of this Agreement and the repayment of all Loans and the payment and performance of all other Obligations owed to the Lenders.

11.12 Nonliability of the Lenders. Borrower acknowledges and agrees that:

(a) Any inspections of any Property of Borrower made by or through the Administrative Agent, the Collateral Agent or the Lenders are for purposes of administration of the Loan only and Borrower is not entitled to rely upon the same (whether or not such inspections are at the expense of Borrower);

(b) By accepting or approving anything required to be observed, performed, fulfilled or given to the Administrative Agent, the Collateral Agent or the Lenders pursuant to the Loan Documents, neither the Administrative Agent, the Collateral Agent nor the Lenders shall be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Administrative Agent, the Collateral Agent or the Lenders;

(c) The relationship between Borrower and the Administrative Agent, the Collateral Agent and the Lenders is, and shall at all times remain, solely that of borrowers and lenders; neither the Administrative Agent, the Collateral Agent nor the Lenders shall under any circumstance be construed to be partners or joint venturers of Borrower or its Affiliates; neither the Administrative Agent, the Collateral Agent nor the Lenders shall under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Borrower or its Affiliates, or to owe any fiduciary duty to Borrower or its Affiliates; neither the Administrative Agent, the Collateral Agent nor the Lenders undertake or assume any responsibility or duty to Borrower or its Affiliates to select, review, inspect, supervise,

pass judgment upon or inform Borrower or its Affiliates of any matter in connection with their Property or the operations of Borrower or its Affiliates; Borrower and its Affiliates shall rely entirely upon their own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the Administrative Agent, the Collateral Agent or the Lenders in connection with such matters is solely for the protection of the Administrative Agent, the Collateral Agent and the Lenders and neither Borrower nor any other Person is entitled to rely thereon; and

(d) The Administrative Agent, the Collateral Agent and the Lenders shall not be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to Property caused by the actions, inaction or negligence of Borrower and/or its Affiliates and Borrower hereby indemnifies and holds the Administrative Agent, the Collateral Agent and the Lenders harmless on the terms set forth in Section 11.11 from any such loss, damage, liability or claim.

11.13 No Third Parties Benefited. This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of Borrower, the Administrative Agent, the Collateral Agent and the Lenders in connection with the Loans, and is made for the sole benefit of Borrower, the Administrative Agent, the Collateral Agent and the Lenders, and the Administrative Agent's, the Collateral Agent's and the Lenders' successors and assigns. Except as provided in Sections 11.8 and 11.11, no other Person shall have any rights of any nature hereunder or by reason hereof.

11.14 Confidentiality. Each Lender agrees to hold any confidential information that it may receive from Borrower pursuant to this Agreement in confidence, except for disclosure: (a) to other Lenders or Affiliates of a Lender; (b) to legal counsel and accountants for Borrower or any Lender; (c) to other professional advisors to Borrower or any Lender, provided that the recipient has accepted such information subject to a confidentiality agreement substantially similar to this Section 11.14; (d) to regulatory officials having jurisdiction over that Lender; (e) as required by Law or legal process, provided that each Lender agrees to notify Borrower of any such disclosures unless prohibited by applicable Laws, or in connection with any legal proceeding to which that Lender and Borrower are adverse parties; and (f) to another financial institution in connection with a disposition or proposed disposition to that financial institution of all or part of that Lender's interests hereunder or a participation interest in its Notes, provided that the recipient has accepted such information subject to a confidentiality agreement substantially similar to this Section 11.14. For purposes of the foregoing, "confidential information" shall mean any information respecting Borrower or its Subsidiaries reasonably considered by Borrower to be confidential, other than (i) information previously filed with any Governmental Agency and available to the public, (ii) information previously published in any public medium from a source other than, directly or indirectly, that Lender, and (iii) information previously disclosed by Borrower to any Person not associated with Borrower which does not owe a professional duty of confidentiality to Borrower or which has not executed an appropriate confidentiality agreement with Borrower. Nothing in this Section shall be construed to create or give rise to

any fiduciary duty on the part of the Administrative Agent, the Collateral Agent or the Lenders to Borrower.

11.15 Further Assurances. Borrower shall, at its expense and without expense to the Lenders, the Administrative Agent, or the Collateral Agent, do, execute and deliver such further acts and documents as the Requisite Lenders, the Administrative Agent, or the Collateral Agent from time to time reasonably require for the assuring and confirming unto the Lenders, the Administrative Agent, or the Collateral Agent of the rights hereby created or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document.

11.16 Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof, including the Existing Loan Agreement and all Loan Documents referred to therein. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent, the Collateral Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

11.17 Governing Law; JURISDICTION AND VENUE. Except to the extent otherwise provided therein, each Loan Document shall be governed by, and construed and enforced in accordance with, the Laws of California applicable to contracts made and performed in California. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN A STATE OR FEDERAL COURT LOCATED IN THE STATE OF CALIFORNIA. THE PARTIES EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN ANY SUCH COURT, AND THE PARTIES HEREBY WAIVE ANY OBJECTION THEY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION AND HEREBY CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY ANY SUCH COURT. FURTHERMORE, THE PARTIES HEREBY WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO ASSERT THAT ANY SUCH COURT IS AN INCONVENIENT FORUM OR OTHERWISE TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11.17.

11.18 Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

11.19 Headings. Article and Section headings in this Agreement and the other Loan Documents are included for convenience of reference only and are not part of this Agreement or the other Loan Documents for any other purpose.

11.20 Time of the Essence. Time is of the essence of the Loan Documents.

11.21 Foreign Lenders and Participants. Each Lender that is incorporated or otherwise organized under the Laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia shall deliver to Borrower (with a copy to the Administrative Agent), on or before the Closing Date (or on or before accepting an assignment or receiving a participation interest herein pursuant to Section 11.8, if applicable) two duly completed copies, signed by a Responsible Official, of either Form 1001 (relating to such Lender and entitling it to a complete exemption from withholding on all payments to be made to such Lender by Borrower pursuant to this Agreement) or Form 4224 (relating to all payments to be made to such Lender by the Borrower pursuant to this Agreement) of the United States Internal Revenue Service or such other evidence (including, if reasonably necessary, Form W-9) satisfactory to Borrower and the Administrative Agent that no withholding under the federal income tax laws is required with respect to such Lender. Thereafter and from time to time, each such Lender shall (a) promptly submit to Borrower (with a copy to the Administrative Agent), such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to Borrower and the Administrative Agent of any available exemption from, United States withholding taxes in respect of all payments to be made to such Lender by Borrower pursuant to this Agreement and (b) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Eurodollar Lending Office, if any) to avoid any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to such Lender. In the event that Borrower or the Administrative Agent become aware that a participation has been granted pursuant to Section 11.8(e) to a financial institution that is incorporated or otherwise organized under the Laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia, then, upon request made by Borrower or the Administrative Agent to the Lender which granted such participation, such Lender shall cause such participant financial institution to deliver the same documents and information to Borrower and the Administrative Agent as would be required under this Section if such financial institution were a Lender.

11.22 Hazardous Material Indemnity. Borrower hereby agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Administrative Agent) the Administrative Agent, the Collateral Agent and each of the Lenders and their respective directors, officers, employees, agents, successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all reasonable costs and expenses incurred in connection therewith (including but not limited to reasonable attorneys' fees and the reasonably allocated costs of attorneys employed by the Administrative Agent or any Lender, and expenses to the extent that the

defense of any such action has not been assumed by Borrower), arising directly or indirectly out of (i) the presence on, in, under or about any Real Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from any Real Property and (ii) any activity carried on or undertaken on or off any Real Property by Borrower or any of its predecessors in title, whether prior to or during the term of this Agreement, and whether by Borrower or any predecessor in title or any employees, agents, contractors or subcontractors of Borrower or any predecessor in title, or any third persons at any time occupying or present on any Real Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on, in, under or about any Real Property. The foregoing indemnity shall further apply to any residual contamination on, in, under or about any Real Property, or affecting any natural resources, and to any contamination of any Property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable Laws, but the foregoing indemnity shall not apply to Hazardous Materials on any Real Property, the presence of which is caused by the Administrative Agent or the Lenders. Borrower hereby acknowledges and agrees that, notwithstanding any other provision of this Agreement or any of the other Loan Documents to the contrary, the obligations of Borrower under this Section shall be unlimited corporate obligations of Borrower and shall not be secured by any Lien on any Real Property. Any obligation or liability of Borrower to any Indemnitee under this Section 11.22 shall survive the expiration or termination of this Agreement and the repayment of all Loans and the payment and performance of all other Obligations owed to the Lenders.

11.23 Waiver of Right to Trial by Jury. BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF BORROWER'S RIGHT TO TRIAL BY JURY.

11.24 Purported Oral Amendments. BORROWER EXPRESSLY ACKNOWLEDGES THAT THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY ONLY BE AMENDED OR MODIFIED, OR THE PROVISIONS HEREOF OR THEREOF WAIVED OR SUPPLEMENTED, BY AN INSTRUMENT IN WRITING THAT COMPLIES WITH SECTION 11.2. BORROWER AGREES THAT IT WILL NOT RELY ON ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR ORAL OR WRITTEN STATEMENTS BY ANY REPRESENTATIVE OF THE ADMINISTRATIVE AGENT OR ANY BANK THAT DOES NOT COMPLY WITH

SECTION 11.2 TO EFFECT AN AMENDMENT, MODIFICATION, WAIVER OR SUPPLEMENT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

VIASAT, INC.

By:

Ronald G. Wangerin
Chief Financial Officer

Address:

ViaSat, Inc.
6155 El Camino Real
Carlsbad, California 92009
Attn: Ronald G. Wangerin
Chief Financial Officer

Telecopier: (760) 929-3926
Telephone: (760) 476-2200

UNION BANK OF CALIFORNIA, N.A.,
as Administrative Agent

By:

Douglas S. Lambell
Vice President

Address:

Union Bank of California, N.A.
San Diego Commercial Banking Office
530 "B" Street, 4th Floor, S-420
San Diego, California 92101-4407
Attn: Mr. Douglas S. Lambell

Telecopier: (619) 230-3766
Telephone: (619) 230-3029

COMERICA BANK - CALIFORNIA,
as Collateral Agent

By:

Stephen M. Cusato
Senior Vice President

Address:

Comerica Bank - California
701 "B" Street, Suite 600
San Diego, California 92101
Attn: Mr. Stephen M. Cusato

Telecopier: (619) 234-2234
Telephone: (619) 338-1501

UNION BANK OF CALIFORNIA, N.A.,
as a Lender

By:

Douglas S. Lambell
Vice President

Address:

Union Bank of California, N.A.
San Diego Commercial Banking Office
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Attn: Mr. Douglas S. Lambell

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COMERICA BANK - CALIFORNIA, as a
Lender

By:

Stephen M. Cusato
Senior Vice President

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