

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 September 30, 2000.

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

The number of shares outstanding of the issuer's common stock, \$.0001
par value, as of November 13, 2000 was 21,846,921.

VIASAT, INC.
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VIASAT, INC.
CONDENSED CONSOLIDATED BALANCE SHEET

	MARCH 31, 2000	SEPTEMBER 30, 2000
		(UNAUDITED)
ASSETS		
- - - - -		
Current assets:		
Cash and cash equivalents	\$ 19,520,000	\$ 20,443,000
Short-term investments	121,000	-
Accounts receivable	26,268,000	67,009,000
Inventory	3,122,000	17,252,000
Deferred income taxes	1,813,000	1,808,000
Other current assets	2,167,000	2,676,000
Total current assets	53,011,000	109,188,000
Property and equipment, net	8,164,000	17,600,000
Intangible assets, net	-	22,150,000
Other assets	755,000	2,553,000
Total assets	\$ 61,930,000	\$151,491,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 8,934,000	\$ 13,274,000
Accrued liabilities	5,001,000	10,531,000
Current portion of notes payable	907,000	726,000
Total current liabilities	14,842,000	24,531,000
Notes payable	336,000	-
Other liabilities	755,000	766,000
Total long-term liabilities	1,091,000	766,000
Contingencies (Note 6)		
Minority interest in consolidated subsidiary	-	301,000
Stockholders' equity:		
Common stock	2,000	2,000
Paid in capital	18,932,000	94,439,000
Retained earnings	27,063,000	31,452,000
Total stockholders' equity	45,997,000	125,893,000
Total liabilities and stockholders' equity	\$ 61,930,000	\$151,491,000

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.
CONDENSED CONSOLIDATED STATEMENT OF INCOME
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		SIX MONTHS ENDED SEPTEMBER 30,	
	1999	2000	1999	2000
Revenues	\$ 17,017,000	\$ 39,730,000	\$ 34,052,000	\$ 76,356,000
Cost of revenues	9,558,000	27,366,000	19,267,000	51,345,000
Gross profit	7,459,000	12,364,000	14,785,000	25,011,000
Operating expenses:				
Selling, general and administrative	2,433,000	6,626,000	5,381,000	12,390,000
Independent research and development	2,290,000	1,712,000	3,880,000	3,366,000
Acquired in-process research and development	--	--	--	2,193,000
Amortization of intangible assets	--	825,000	--	1,375,000
Income from operations	2,736,000	3,201,000	5,524,000	5,687,000
Other income (expense):				
Interest income	223,000	519,000	479,000	1,026,000
Interest expense	(42,000)	(33,000)	(89,000)	(65,000)
Minority interest	--	2,000	--	2,000
Income before income taxes	2,917,000	3,689,000	5,914,000	6,650,000
Provision for income taxes	1,113,000	1,255,000	2,305,000	2,261,000
Net income	\$ 1,804,000	\$ 2,434,000	\$ 3,609,000	\$ 4,389,000
Basic net income per share	\$.11	\$.11	\$.22	\$.21
Diluted net income per share	\$.11	\$.11	\$.22	\$.19
Shares used in basic net income per share computation	16,151,674	21,796,911	16,158,720	21,336,337
Shares used in diluted net income per share computation	16,758,502	23,006,414	16,596,972	22,528,190

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.
CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS
(UNAUDITED)

	SIX MONTHS ENDED SEPTEMBER 30,	
	1999	2000
Cash flows from operating activities:		
Net income	\$ 3,609,000	\$ 4,389,000
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation and amortization	1,731,000	3,886,000
Acquired in-process research and development	-	2,193,000
Deferred taxes	321,000	(1,076,000)
Minority interest in consolidated subsidiary	-	301,000
Non-cash compensation	-	134,000
Increase (decrease) in cash resulting from changes in assets and liabilities (net of effect of acquisition):		
Accounts receivable	(5,053,000)	(21,980,000)
Inventory	(617,000)	(5,587,000)
Other assets	(133,000)	(1,226,000)
Accounts payable	195,000	921,000
Accrued liabilities	(1,002,000)	5,530,000
Other liabilities	148,000	11,000
	-----	-----
Net cash used in operating activities	(801,000)	(12,504,000)
	-----	-----
Cash flows from investing activities:		
Acquisition of a business	-	(59,411,000)
Proceeds from sale of short-term investments	8,582,000	121,000
Purchases of property and equipment	(984,000)	(924,000)
	-----	-----
Net cash provided by (used in) investing activities	7,598,000	(60,214,000)
	-----	-----
Cash flows from financing activities:		
Repayment of notes payable	(702,000)	(517,000)
Proceeds from issuance of common stock, net of issuance costs	382,000	74,158,000
	-----	-----
Net cash (used in) provided by financing activities	(320,000)	73,641,000
	-----	-----
Net increase in cash and cash equivalents	6,477,000	923,000
Cash and cash equivalents at beginning of period	6,005,000	19,520,000
	-----	-----
Cash and cash equivalents at end of period	\$ 12,482,000	\$ 20,443,000
	=====	=====
Supplemental information:		
Cash paid for interest	\$ 89,000	\$ 33,000
	=====	=====
Cash paid for income taxes	\$ 2,017,000	\$ 4,534,000
	=====	=====

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(UNAUDITED)

	COMMON STOCK		PAID IN CAPITAL	RETAINED EARNINGS
	NUMBER OF SHARES	AMOUNT		
Balance at March 31, 2000	16,393,208	\$ 2,000	\$18,932,000	\$27,063,000
Exercise of stock options	175,515		645,000	
Issuance of shares for Employee Stock Purchase Plan	17,338		364,000	
Issuance of shares for secondary public offering, net of issuance costs of \$903,000	5,224,150		73,149,000	
Issuance of warrants to purchase 100,000 shares of common stock			1,215,000	
Non-cash compensation related to stock options			134,000	
Net income				4,389,000
Balance at September 30, 2000	21,810,211	\$ 2,000	\$94,439,000	\$31,452,000

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 September 30, 2000, the condensed consolidated statements of income for the three and six month periods ended September 30, 1999 and 2000, the condensed consolidated statement of cash flows for the six month periods ended September 30, 1999 and 2000, and the condensed consolidated statement of stockholders' equity for the six months ended September 30, 2000 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 accruals) 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, 2000 included in our 2000 Annual Report on Form 10-K. Interim operating results are not necessarily indicative of operating results for the full year.

The accompanying condensed consolidated financial statements include an equity interest acquired from TrellisWare Technologies, Inc. that exceeds a 50% interest. All significant intercompany amounts have been eliminated. This equity interest is accounted for under the equity method of accounting as we exercise significant influence. This investment is recorded initially at cost and subsequently adjusted for net equity in income (loss) and cash contributions and distributions. Ownership of the preferred stock of TrellisWare entitles us to substantially all of the economic benefits in the preferred stock affiliates.

On July 28, 2000 the Board of Directors declared a two-for-one stock split of our common stock in the form of a stock dividend. The stock dividend was distributed at the close of business on August 31, 2000 to stockholders of record on August 21, 2000. All share and per share information in the financial statements have been adjusted to reflect the stock split on a retroactive basis.

The preparation of financial statements in conformity with generally accepted accounting principles 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.

NOTE 2 - SECONDARY PUBLIC STOCK OFFERING AND ACQUISITION OF SATELLITE NETWORKS BUSINESS

On April 24, 2000, we completed a secondary public stock offering for the sale of 5,224,150 shares of common stock for net proceeds of approximately \$73.1 million.

On April, 25, 2000, we completed the acquisition of the satellite networks business (the "Satellite Networks Business") of Scientific-Atlanta, Inc. for an aggregate purchase price of approximately \$59.4 million in cash (including post-closing adjustments), plus warrants to purchase 100,000 shares of common stock valued at \$1.2 million.

The Satellite Networks Business is a significant DAMA-based VSAT supplier with additional product lines addressing the non-DAMA VSAT market, the gateway market, the asset tracking and meter reading market, and the telemetry and antenna systems market. In addition, the Satellite Networks Business brings us a larger and more experienced commercial sales force, a significant customer base, additional research and development, and engineering capabilities. We have moved the headquarters of our commercial business to the Satellite Networks Business facilities in Norcross, Georgia.

The acquisition has been accounted for by the purchase method of accounting as defined in APB Opinion No. 16. The purchase price of the acquisition has been allocated to the estimated fair value of the tangible and intangible assets acquired and liabilities assumed of the Satellite Networks Business. The purchase price allocation for certain assets is preliminary and further refinements are likely to be made on the

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

completion of final valuation studies. In connection with this acquisition, a charge of \$2.2 million for acquired in process research and development was included in our first quarter results. This charge represented the fair value of certain acquired research and development projects that were determined to have not reached technological feasibility and have no alternative future use. The estimated fair value of assets acquired and liabilities assumed, which is subject to further refinement, is as follows:

Accounts receivable	\$18,761,000
Inventory	8,478,000
Property, plant and equipment	10,934,000
Intangible assets	23,679,000
Acquired in-process research and development	2,193,000
Liabilities	(3,419,000)

Total	\$60,626,000
	=====

The following unaudited pro forma condensed combined financial information gives effect to the acquisition as of April 1, 1999. Because the Satellite Networks Business had been operated as a division of Scientific-Atlanta, its results may not reflect those that would have resulted had it operated as an independent entity or as a part of ViaSat. The pro forma information for the three and six month periods ended September 30, 1999 and 2000 does not reflect the effects of anticipated post-acquisition cost savings or restructuring efficiencies.

The pro forma condensed combined financial information combines information from ViaSat's unaudited income statement for the three and six month periods ended September 30, 1999 and 2000 with the Satellite Networks Business' unaudited income statement for the three and six month periods ended September 30, 1999 and 2000.

	THREE MONTHS ENDED SEPTEMBER 30,		SIX MONTHS ENDED SEPTEMBER 30,	
	----- 1999 -----	2000 -----	----- 1999 -----	2000 -----
Revenues	\$41,154,000	\$39,730,000	\$76,491,000	\$83,739,000
Net income	544,000	2,434,000	1,822,000	4,844,000
Earnings per share				
Basic	.03	.11	.09	.23
Diluted	.02	.11	.09	.22
Weighted average number of shares*				
Basic	21,375,824	21,796,911	20,947,525	21,336,337
Diluted	21,982,652	23,006,414	21,385,777	22,528,190

*The weighted average number of shares includes 5,224,150 shares related to the secondary public offering.

The unaudited pro forma financial information presented is not necessarily indicative of either the results of operations that would have occurred had the acquisition taken place on April 1, 1999 or the future results of operations of the combined entities.

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

NOTE 3 - REVENUE RECOGNITION

The majority of our revenues are derived from products and 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 contracts 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 and negotiations with U.S. Government representatives. These audits have been completed and agreed upon through fiscal year 1996. Contract revenues and accounts receivable are stated at amounts which are expected to be realized upon final settlement.

NOTE 4 - EARNINGS PER SHARE

Common stock equivalents of 606,828 and 1,209,503 shares for the three months ended September 30, 1999 and 2000, respectively, and 438,252 and 1,191,853 for the six months ended September 30, 1999 and 2000 respectively, were used to calculate diluted earnings per share. Antidilutive shares excluded from the calculation were 122,348 and 339,809 shares for the three months ended September 30, 1999 and 2000, respectively. Antidilutive shares excluded from the calculation were 546,572 and 319,570 shares for the six months ended September 30, 1999 and 2000, respectively. Common stock equivalents are primarily comprised of options granted under the our stock option plan.

NOTE 5 - COMPOSITION OF CERTAIN BALANCE SHEET CAPTIONS

	MARCH 31, 2000	SEPTEMBER 30, 2000
	-----	-----
		(UNAUDITED)
Accounts receivable:		
Billed	\$ 13,031,000	\$ 47,407,000
Unbilled	13,237,000	19,602,000
	-----	-----
	\$ 26,268,000	\$ 67,009,000
	=====	=====
Inventory:		
Raw materials	\$ 2,263,000	\$ 8,957,000
Work in process	484,000	3,659,000
Finished goods	375,000	4,636,000
	-----	-----
	\$ 3,122,000	\$ 17,252,000
	=====	=====
Intangible assets:		
Technology	-	\$ 8,987,000
Contracts and relationships	-	8,987,000
Acquired work force	-	5,551,000
Accumulated amortization	-	(1,375,000)
	-----	-----
	-	\$ 22,150,000
	=====	=====
Accrued liabilities:		
Current portion of warranty reserve	\$ 799,000	\$ 1,622,000
Accrued vacation	1,188,000	1,572,000
Accrued bonus	1,004,000	888,000
Accrued 401(k) matching contribution	917,000	466,000
Collections in excess of revenues	694,000	5,765,000
Other	399,000	218,000
	-----	-----
	\$ 5,001,000	\$ 10,531,000
	=====	=====

NOTE 6 - CONTINGENCIES

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

On September 15, 2000 ORBCOMM Global, L.P. (ORBCOMM) and seven of its subsidiaries filed a voluntary petition for Chapter 11 relief in the United States Bankruptcy Court for the District of Delaware as part of its efforts to restructure and reorganize its business. ORBCOMM has continued its efforts to maintain and operate its network of low-Earth orbit (LEO) satellites and related ground facilities while it restructures its operations. The following table summarizes our assets related to ORBCOMM at September 30, 2000.

Accounts receivable-billed	\$4,540,000
Accounts receivable-unbilled	106,000
Inventory	212,000

Total	\$4,858,000
	=====

In addition, we have committed purchase orders with vendors in the amount of \$341,000. We cannot make assurances that the assets listed above will be fully recovered. If ORBCOMM is unable to successfully restructure its operations it could cause ViaSat to incur losses which could harm our business; however, we have not recorded a reserve as it is not possible at this time to reasonably estimate or determine what loss, if any, will be incurred.

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 such performance covenants and milestones permit the other party to terminate the contract and, under certain 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 certain of these contracts. Historically, our customers have not elected to terminate such contracts or seek liquidated damages from us and management does not believe that its existing customers will do so; therefore, we have not accrued for any potential liquidated damages or penalties.

We may be involved in legal proceedings arising in the ordinary course of business, none of which is expected to have a material adverse effect on our business, financial condition, results of operations or cash flows.

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

NOTE 7 - SEGMENT INFORMATION

We are organized primarily based on the basis of products with commercial and defense communication applications, represented by ViaSat Satellite Networks which operates primarily in the commercial market and Electronic Systems Group which operates primarily in the defense market.

The following table summarizes revenues and operating profits by operating segment for the three and six month periods ended September 30, 2000. The acquisition of the Satellite Networks Business resulted in a second operating segment. Certain corporate general and administrative costs, amortization of intangible assets and the charge 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.

	THREE MONTHS ENDED	SIX MONTHS ENDED
	SEPTEMBER 30, 2000 (UNAUDITED)	
Revenues		
ViaSat Satellite Networks	\$ 22,910,000	\$ 45,454,000
Electronic Systems Group	16,820,000	30,902,000
	-----	-----
Total revenues	39,730,000	76,356,000
Operating profits		
ViaSat Satellite Networks	1,388,000	3,589,000
Electronic Systems Group	3,035,000	6,422,000
	-----	-----
Segment operating profit before corporate	4,423,000	10,011,000
Corporate	(397,000)	(756,000)
Amortization of intangibles	(825,000)	(1,375,000)
Acquired in-process research and development	--	(2,193,000)
	-----	-----
Total operating profits	\$ 3,201,000	\$ 5,687,000
	=====	=====

Revenue information by geographic area for the three and six months ended September 30, 2000 is as follows:

	THREE MONTHS ENDED	SIX MONTHS ENDED
	SEPTEMBER 30, 2000 (UNAUDITED)	
North America	\$32,298,000	\$61,523,000
Europe	3,235,000	7,187,000
Asia Pacific	4,035,000	6,530,000
Latin America	162,000	1,116,000
	-----	-----
	\$39,730,000	\$ 76,356,000
	=====	=====

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

The net book value of long-lived assets located outside North America was \$37,000 at September 30, 2000.

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

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

When used in this discussion, the words "believes," "anticipates," "expects," "intends" and similar expressions are intended to identify forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to certain risks and uncertainties which could cause actual results to differ materially from those projected. Readers are cautioned not to place undue reliance on these forward-looking statements which speak only as of the date hereof. We undertake no obligation to republish revised forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Readers are also urged to carefully review and consider the various disclosures made by us which attempt to advise interested parties of the factors which affect our business, including without limitation the disclosures made under Item 1. Business - "Factors That May Affect Future Performance" in our Annual Report on Form 10-K for our fiscal year ended March 31, 2000, filed with the Securities and Exchange Commission.

RESULTS OF OPERATIONS

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

	THREE MONTHS ENDED SEPTEMBER 30,		SIX MONTHS ENDED SEPTEMBER 30,	
	1999	2000	1999	2000
Revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues	56.2	68.9	56.6	67.2
Gross profit	43.8	31.1	43.4	32.8
Operating expenses:				
Selling, general and administrative	14.3	16.7	15.8	16.2
Independent research and development	13.4	4.3	11.4	4.4
Acquired in-process research and development	--	--	--	2.9
Amortization of intangible assets	--	2.1	--	1.8
Income from operations	16.1	8.0	16.2	7.5
Income before income taxes	17.1	9.3	17.4	8.7
Net income	10.6	6.1	10.6	5.7

THREE MONTHS ENDED SEPTEMBER 30, 1999 VS. THREE MONTHS ENDED SEPTEMBER 30, 2000

Revenues. Revenues increased 133.5% from \$17.0 million for the three months ended September 30, 1999 to \$39.7 million for the three months ended September 30, 2000. This increase was primarily due to the acquisition of the Satellite Networks Business as well as improvements in revenues generated by commercial sales and other development programs including the multifunction information distribution system (MIDS). These increases were partially offset by a decrease in revenues resulting from completion of simulator systems and UHF modem production contracts.

Gross Profit. Gross profit increased 65.8% from \$7.5 million (43.8% of revenues) for the three months ended September 30, 1999 to \$12.4 million (31.1% of revenues) for the three months ended September 30, 2000. This increase was primarily due to higher volumes related to the acquisition of the Satellite Networks Business. The decrease as a percentage of revenues resulted from lower volumes of high margin defense products and increased volumes of lower margin development projects offset in part by improvements in the margins on commercial products.

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

Selling, General and Administrative Expenses. Selling, general and administrative ("SG&A") expenses increased 172.3% from \$2.4 million (14.3% of revenues) for the three months ended September 30, 1999 to \$6.6 million (16.7% of revenues) for the three months ended September 30, 2000. The increase was primarily due to the additional costs from the Satellite Networks Business, transition costs related to the acquisition and efforts related to pursuing broadband business. 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. Certain 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 decreased 25.2% from \$2.3 million (13.4% of revenues) for the three months ended September 30, 1999, to \$1.7 million (4.3% of revenues) for the three months ended September 30, 2000. This decrease resulted from a higher level of funded development programs.

Amortization of Intangible Assets. Intangible assets are being amortized over useful lives ranging from three to nine years. For the three months ended September 30, 2000, amortization expense was \$825,000.

Interest Expense. Interest expense decreased from \$42,000 for the three months ended September 30, 1999 to \$33,000 for the three months ended September 30, 2000. Interest expense relates to loans for the purchase of capital equipment, which are generally three year variable rate term loans, and to short-term borrowings under our line of credit to cover working capital requirements. Total outstanding equipment loans were \$1.8 million at September 30, 1999, and \$726,000 at September 30, 2000. There were no outstanding borrowings under our line of credit as of September 30, 1999 or 2000.

Interest Income. Interest income increased from \$223,000 for the three months ended September 30, 1999 to \$519,000 for the three months ended September 30, 2000. This increase resulted from increased invested balances. Interest income relates largely to interest earned on short-term deposits of cash.

Provision for Income Taxes. Our effective income tax rate decreased from 38.2% for the three months ended September 30, 1999 to 34.0% for the three months September 30, 2000. The difference relates primarily to increases in research and development tax credits.

SIX MONTHS ENDED SEPTEMBER 30, 2000 VS. SIX MONTHS ENDED SEPTEMBER 30, 1999

Revenues. Revenues increased 124.2% from \$34.1 million for the six months ended September 30, 1999 to \$76.4 million for the six months ended September 30, 2000. This increase was primarily due to the acquisition of the Satellite Networks Business as well as improvements in revenues generated by commercial sales and other development programs including the multifunction information distribution system (MIDS). These increases were partially offset by a decrease in revenues resulting from completion of simulator systems and UHF modem production contracts.

Gross Profit. Gross profit increased 69.2% from \$14.8 million (43.4% of revenues) for the six months ended September 30, 1999 to \$25.0 million (32.8% of revenues) for the six months ended September 30, 2000. This increase was primarily due to higher volumes related to the acquisition of the Satellite Networks Business. The decrease as a percentage of revenues resulted from lower volumes of high margin defense products and increased volumes of lower margin development projects offset in part by improvements in the margins on commercial products.

Selling, General and Administrative Expenses. SG&A expenses increased 130.3% from \$5.4 million (15.8% of revenues) for the six months ended September 30, 1999 to \$12.4 million (16.2% of revenues) for the six months ended September 30, 2000. The increase in SG&A was primarily due to the additional costs from the Satellite Networks Business, transition costs related to the acquisition, marketing of commercial products, increased business development and bid and proposal efforts for defense programs, and additional administrative staffing to support our growth. 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. Certain SG&A expenses are difficult to predict and vary based on specific government and commercial sales opportunities.

Independent Research and Development. IR&D expenses decreased 13.2% from \$3.9 million (11.4% of revenues) for the six months ended September 30, 1999 to \$3.4 million (4.4% of revenues) for the six months ended September 30, 2000. This decrease resulted from the award of funded development contracts related to both our defense and commercial products.

Acquired In-Process Research and Development. The acquisition of the Satellite Networks Business was accounted for by the purchase method of accounting. In connection with this acquisition, a charge of \$2.2 million for purchased in-process research and development was included in our first quarter results. This charge represented the fair value of certain acquired research and development projects that were determined to have not reached technological feasibility.

Amortization of Intangible Assets. Intangible assets are being amortized over useful lives ranging from three to nine years. For the six months ended September 30, 2000, amortization expense was \$1.4 million for the period from April 25, 2000 to September 30, 2000.

Interest Expense. Interest expense decreased from \$89,000 for the six months ended September 30, 1999 to \$65,000 for the six months ended September 30, 2000. Interest expense relates to loans for the purchase of capital equipment, which are generally three year variable-rate term loans, and to short-term borrowings under our line of credit to cover working capital requirements. Total outstanding equipment loans were \$1.8 million at September 30, 1999, and \$726,000 at September 30, 2000. There were no outstanding borrowings under our line of credit as of September 30, 1999 or 2000.

Interest Income. Interest income increased from \$479,000 for the six months ended September 30, 1999 to \$1.0 million for the six months ended September 30, 2000. This increase resulted from higher average invested cash balances.

Provision for Income Taxes. Our effective income tax rate decreased from 39.0% for the six months ended September 30, 1999 to 34.0% for the six months ended September 30, 2000. The decrease relates primarily to increases in research and development tax credits.

BACKLOG

At September 30, 2000 we had firm backlog of \$161.0 million of which \$147.0 million was funded. The firm backlog of \$161.0 million does not include contract options of \$58.5 million. Of the \$161.0 million in firm backlog, approximately \$62.3 million is expected to be delivered in the fiscal year ending March 31, 2001, and the balance is expected to be delivered in the fiscal year ending March 31, 2002 and thereafter. At March 31, 2000 we had firm backlog of \$88.2 million, of which \$58.6 million was funded, not including options of \$53.3 million. We include in our backlog only those orders for which we have accepted purchase orders. However, backlog is not necessarily indicative of future sales. A majority of our government backlog scheduled for delivery can be terminated at the convenience of the government since orders are often made substantially in advance of delivery, and our contracts typically provide that orders may be terminated with limited or no penalties. In addition, purchase orders may set forth 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 related purchase order.

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 government customers allocate funds for expenditures on long-term contracts on a periodic basis. Our ability to realize revenues from government contracts in backlog is dependent upon adequate funding for such contracts. Although funding of government 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.

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 used in operating activities for the six months ended September 30, 1999 was \$801,000 and cash used in operating activities for the six months ended September 30, 2000 was \$12.5 million. Increases in accounts receivable and inventories due to the new business were offset by increases in accrued liabilities.

Cash provided by investing activities for the six months ended September 30, 1999 was \$7.6 million and cash used in investing activities for the six months ended September 30, 2000 was \$60.2 million. During the six months ended September 30, 2000, we acquired the Satellite Networks Business for cash of \$59.4 million plus warrants to purchase 100,000 shares of common stock valued at \$1.2 million. In addition, we acquired \$924,000 in equipment in the six months ended September 30, 2000 compared to \$984,000 of equipment during the six months ended September 30, 1999, excluding the acquisition of the Satellite Networks Business.

Cash used in financing activities for the six months ended September 30, 1999 was \$320,000 and cash provided by financing activities for the six months ended September 30, 2000 was \$73.6 million. This increase was primarily the result of completing a secondary public stock offering for \$73.1 million.

At September 30, 2000, we had \$20.4 million in cash, cash equivalents and short-term investments, \$84.7 million in working capital and \$726,000 in equipment financing. We had no outstanding borrowings under our line of credit at September 30, 2000.

We received a commitment from Union Bank of California and Washington Mutual Bank to provide a total credit facility of \$50.0 million for the acquisition of the Satellite Networks Business. This facility also provided for a secured revolving credit facility of \$25.0 million for general working capital. We did not elect to use the financing for the acquisition and are now in the process of negotiating the terms of the \$25.0 million revolving line of credit facility.

Our future capital requirements will depend upon many factors, including the progress of our research and development efforts, expansion of our marketing efforts, and the nature and timing of orders. We believe that our current cash balances and net cash expected to be provided by operating activities will be sufficient to meet our working capital and capital expenditure requirements for at least the next 12 months. We invest our cash in excess of current operating requirements in short-term, interest-bearing, investment-grade securities.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

PART II - OTHER INFORMATION

ITEM 4. SUBMISSION OF MATTERS TO VOTE OF SECURITY HOLDERS

- (a) We held our Annual Meeting of Stockholders on September 26, 2000.
- (b) See paragraph (c) below.
- (c) The matters voted upon at the meeting and the votes cast with respect thereto were as follows:

	Votes For ---	Votes Against/Withheld -----	Abstentions -----	Broker Non-Votes -----
Election of Directors				
Robert W. Johnson	14,517,050	-0-	216,534	-0-
William A. Owens	14,522,590	-0-	210,994	-0-
Amendment of The 1996 Equity Participation Plan	11,268,120	3,440,246	25,218	-0-
Amendment of Certificate of Incorporation to Increase Authorized Shares	11,659,330	3,065,476	8,978	-0-

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

- (a) Exhibit 3.1 - Second Amended and Restated Certificate of Incorporation of ViaSat, Inc.
- Exhibit 10.1 - The Amended and Restated 1996 Equity Participation Plan of ViaSat, Inc.
- Exhibit 10.2 - Terminal Development, Production and Purchase Agreement by and between Astrolink International LLC and ViaSat, Inc., dated October 20, 2000.
- Exhibit 10.3 - Memorandum of Agreement between Astrolink International LLC and ViaSat, Inc., dated October 20, 2000.
- Exhibit 27.1 - Financial Data Schedule
- (b) We filed no reports on Form 8-K during the quarter ended September 30, 2000.

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.

November 14, 2000

/s/ MARK D. DANKBERG

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

/s/ RICHARD A. BALDRIDGE

Richard A. Baldrige
Executive Vice President, Chief Financial
Officer and Chief Operating Officer
(Principal Financial and Accounting Officer)

SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VIASAT, INC.

VIASAT, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of Delaware on October 25, 1996, and was amended and restated on November 4, 1996, pursuant to Section 242 and Section 245 of the Delaware General Corporation Law.

2. This Second Amended and Restated Certificate of Incorporation restates and integrates and further amends the Amended and Restated Certificate of Incorporation of the Corporation. The text of the Amended and Restated Certificate of Incorporation is amended to read as herein set forth in full:

FIRST: The name of the Corporation (hereinafter the "Corporation") is:

VIASAT, INC.

SECOND: The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle; and the name of the Registered Agent of the Corporation in the State of Delaware is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The Corporation is authorized to issue two classes of shares of capital stock to be designated respectively, "Preferred Stock" and "Common Stock". The total number of shares which the Corporation is authorized to issue is one hundred five million (105,000,000). Five million (5,000,000) shares shall be Preferred Stock, of which three million two hundred twenty-five thousand (3,225,000) are hereby designated Series A Convertible Preferred Stock ("Series A Preferred Stock") and one hundred million (100,000,000) shares shall be Common Stock. The Preferred Stock and the Common Stock shall each have a par value of \$.0001 per share.

The Preferred Stock authorized by this Second Amended and Restated Certificate of Incorporation shall be issued from time to time in one or more series. Except with respect to the Series A Preferred Stock which is described below, authority is hereby expressly granted to the Board of Directors of the Corporation to issue, from time to time, shares of Preferred Stock in one or more series, and, in connection with the establishment of any such series by resolution or resolutions, to determine and fix such voting powers, full or limited, or no voting powers, and such other powers, designations, preferences

and relative, participating, optional and other rights, and the qualifications, limitations and restrictions thereof, including, without limitation, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated in such resolution or resolutions, all to the fullest extent permitted by the Delaware General Corporation Law. Without limiting the generality of the foregoing, the resolution or resolutions providing for the establishment of any series of Preferred Stock may, to the extent permitted by law, provide that such series shall be superior to, rank equally with or be junior to the Preferred Stock of any other series. Except as otherwise expressly provided in the resolution or resolutions providing for the establishment of any series of Preferred Stock, no vote of the holders of shares of Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Second Amended and Restated Certificate of Incorporation. The rights preferences, privileges and restrictions of the Series A Preferred Stock and of the holders thereof shall be as follows:

(a) Dividends.

(1) Right to Dividends. The holders of the outstanding shares of Series A Preferred Stock shall be entitled to receive, when and as declared by the Corporation's Board of Directors, and out of any funds legally available therefor, cumulative dividends at the annual rate of \$.009 per share, payable, if earned and declared, in cash on the 1st day of May of each year with respect to the prior fiscal year. Subject to the remainder of this subsection (a), such dividends shall accrue on each such share from the date of its original issue and shall accrue from month to month. Such dividends shall accumulate and accrue during each fiscal year only to the extent of the net income of the Company for such fiscal year. For the purposes of this section, "net income" of the Company for a period shall mean the consolidated net income of the Company, and its subsidiaries, for that period determined in accordance with generally accepted accounting principles.

(2) Priority. No dividend shall be paid or declared and no distribution shall be made on any Common Stock, no shares of Common Stock shall be purchased, redeemed or otherwise acquired by the Corporation and no monies shall be paid into or set aside or otherwise made available for a sinking fund for the purchase, redemption or acquisition of any shares of Common Stock if dividends on the Series A Preferred Stock for the then current annual dividend period and accrued dividends for all previous dividend periods, at the annual rate specified above, have not been paid or declared and a sum sufficient for the payment thereof set apart; provided, however, that subject to subparagraph (g)(1)(i), the restrictions shall not apply to the repurchase of shares of Common Stock from directors or employees of, or consultants to the Corporation pursuant to stock purchase or stock option agreements under which the Corporation has the option or obligation to repurchase such shares upon the occurrence of certain events including the termination of employment. Any accumulation of dividends on Series A Preferred Stock shall not bear interest.

(3) Partial Payment. If the Board shall declare a payment of dividend and the amount declared for dividend payment is insufficient to permit the payment of the full preferential amounts required to be paid to the holders of the outstanding Series A Preferred Stock and to holders of any other Preferred Stock on a parity therewith as to dividend preferences, then the entire amount declared for dividend payment shall be distributed ratably among the holders of Series A Preferred Stock and such other holders according to the respective preferential amounts to which such holders would otherwise be entitled.

(b) Preference on Liquidation.

(1) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made in respect of the Common Stock of the Corporation, an amount equal to \$.10 plus all accrued, but unpaid dividends, if any, per share (the "Preference Price"). In case of any liquidation, dissolution or winding up of the Corporation, after the holders of shares of Series A Preferred Stock have received an amount equal to the Preference Price, and the further payment of the full preferential amounts to which the holders of any other Preferred Stock are specifically entitled, the assets remaining shall be distributed ratably among the holders of Common Stock until each holder of Common Stock has received an amount equal to the Preference Price. (The amount required to pay the full Preference Price to each holder of Series A Preferred Stock and other preferred stock and the amount required to be paid to each holder of Common Stock hereunder is hereinafter collectively referred to as the "Payout.") Thereafter, any assets remaining shall be distributed ratably among the holders of all of the stock of the Corporation (Preferred and Common).

(2) The sale, transfer or lease of all or substantially all of the assets of the Corporation, the gross proceeds of which do not exceed the Payout, shall be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this paragraph (b).

(3) If upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the full preferential amounts required to be paid to the holders of Series A Preferred Stock and the holders of any other Preferred Stock on a parity therewith as to liquidation preferences, then the entire assets of the Corporation legally available to be distributed shall be distributed ratably among the holders of Series A Preferred Stock and such other holders according to the respective preferential amounts to which such holders would otherwise be entitled.

(c) Voting.

(1) Preferred Stock. Each holder of shares of Series A Preferred Stock shall be entitled to vote on all matters and, except as otherwise expressly provided herein, shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such shares of Series A Preferred Stock could be converted, pursuant to the provisions of paragraph (d) of this Article Four, at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, as the date such vote is taken.

(2) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(d) Conversion Rights.

The holders of Series A Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

(1) Right to Convert. The Series A Preferred Stock shall be convertible, at any time or from time to time, at the option of any holder thereof, into fully paid and nonassessable shares of Common Stock.

(2) Conversion Price. Each share of Series A Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Conversion Price in effect at the time of conversion into \$.10 for each share of Series A Preferred Stock being converted. The initial Conversion Price shall be \$.13633265 subject to adjustment from time to time as provided below.

(3) Mechanics of Conversion. Each holder of Series A Preferred Stock who desires to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series A Preferred Stock being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(4) Adjustment for Stock Splits and Combinations. If the Corporation at any time or from time to time after the date of original issue of the Series A Preferred Stock (the "Commitment Date") effects a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before the subdivision shall be proportionately decreased, and conversely, if the Corporation at any time or from time to time after the Commitment Date combines the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this subparagraph (4) shall become effective as of the date and time the subdivision or combination becomes effective.

(5) Adjustment for Certain Dividends and distributions. In the event the Corporation at any time or from time to time after the Commitment Dates makes, or fixes a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend or distribution is not fully paid on the date fixed

therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subparagraph (5) as of the time of and on the basis of the actual dividend or distribution paid.

(6) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Commitment Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this paragraph (d) with respect to the rights of the holders of Series A Preferred Stock.

(7) Adjustment for Recapitalizations, Reclassifications and Exchanges. If the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of share of any class or classes of stock, whether by recapitalization, reclassification or exchange (other than by subdivision, combination, stock dividend, reorganization, merger, consolidation or sale of assets, as provided for elsewhere in this paragraph (d)), then the holders of Series A Preferred Stock shall have the right thereafter to convert their Series A Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or exchange by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock might have been converted immediately prior to such recapitalization, reclassification or exchange, all subject to further adjustment as provided herein.

(8) Reorganization, Mergers, Consolidations or Sales of Assets. If at any time or from time to time there is a capital reorganization of the Common Stock (other than a recapitalization, reclassification, exchange, subdivision, combination, or stock dividend provided for elsewhere in this paragraph (d)), merger or consolidation of the Corporation with or into another corporation, or sale of all or substantially all of the Corporation's properties and assets to any other person, then, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of Series A Preferred Stock shall thereafter be entitled to receive, upon conversion of the Series A Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such reorganization, merger, consolidation or sale, to which a holder of Common Stock deliverable upon conversion would otherwise have been entitled on such reorganization, merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this paragraph (d) with respect to the rights of the holders of the Series A Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this paragraph (d) (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable.

(9) Accountants' Certificate of Adjustment. In any case of an adjustment or readjustment of the Conversion Price or the number of shares of Common Stock, or other securities issuable upon conversion of Series A Preferred Stock, the Corporation at its expense, shall cause independent public accountants of recognized standing selected by the Corporation (who may be the independent public accountants then auditing the books of the Corporation) to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series A Preferred Stock at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based.

(10) Notices of Record Date. In the event of (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any transfer of all or substantially all of the assets of the Corporation to any other person, any consolidation, any merger, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series A Preferred Stock no less than 10 days and no more than 50 days prior to the record date specified therein or the effective date thereof, a notice specifying (A) the material terms and conditions of the proposed action, (B) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (C) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (D) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up.

(11) Automatic Conversion.

(i) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock based on the then effective Conversion Price immediately upon the closing of any public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, in which the aggregate gross proceeds received by the Corporation at the public offering price equals or exceeds \$3,000,000, and the public offering price per share of which equals or exceeds \$.50 per share of Common Stock (appropriately adjusted for stock dividends, recapitalizations, subdivisions and combinations of shares of Common Stock).

(ii) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock based on the then effective Conversion Price immediately prior to the closing of a merger, consolidation or combination of the Corporation with or into another Corporation or entity, or a sale of substantially all of the Corporation's assets, in which the Corporation receives cash in the aggregate amount of, or freely tradeable securities with an aggregate value of, at least \$3,000,000 and at a price per share of Common Stock equal to or exceeding \$.50 per share.

(iii) Upon the occurrence of the event specified in subparagraph (i) or (ii) above, the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, each holder of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(12) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the shares of Series A Preferred Stock of any holder. In lieu of any fractional shares to which the holder would otherwise be entitled, the corporation shall, to the extent legally permissible, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value as of the date of conversion as determined in good faith by the Board.

(13) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(14) Notices. Any notice required by the provisions of this paragraph (d) to be given to the holder of shares of the Series A Preferred Stock shall be deemed given upon the earlier of actual receipt of 72 hours after the same has been deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

(15) Payment of Taxes. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock, including without limitation, any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares Series A Preferred Stock so converted were registered.

(e) Restrictions and Limitations.

(1) So long as at least 300,000 shares of Series A Preferred Stock remain outstanding, the Corporation shall not, and shall not permit any Subsidiary (as hereinafter defined) to, without the vote or written consent by the holders of more than 50% of the then outstanding Series A Preferred Stock voting as a single class:

(i) Purchase, redeem or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any of the Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from Corporation or any Subsidiary pursuant to an agreement under which the Corporation has the option or the obligation to repurchase such shares upon the occurrence of certain events, including the termination of employment, provided that the total amount applied to such repurchase does not exceed \$50,000 during any twelve-month period;

(ii) Permit any Subsidiary to issue or sell, except to the Corporation or any wholly-owned Subsidiary, any stock of such Subsidiary;

(2) The Corporation shall not amend its Articles of Incorporation without the approval, by vote or written consent, of the holders of more than 50% of the Series A Preferred Stock voting as a single class if such amendment would change any of the rights, preferences, privileges of or limitations provided for herein for the benefit of the Series A Preferred Stock.

- (f) Replacement of Certificates. Upon receipt of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction, or mutilation of any certificate representing any of the Series A Preferred Stock, and, in the case of loss, theft, or destruction, the execution of an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith, the Corporation will issue, or cause to be issued, a new certificate representing such Series A Preferred Stock in lieu of such lost, stolen, destroyed, or mutilated certificate.

FIFTH: The name and the mailing address of the incorporator are as follows:

NAME	MAILING ADDRESS
Daniel Howard	701 "B" Street, Suite 2100 San Diego, California 92101

SIXTH: (1) The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors consisting of not less than 4 nor more than 11 directors, the exact number of directors to be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the entire Board of Directors.

(2) The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. Each director shall serve for a term ending on the date of the third annual meeting of stockholders next following the annual meeting at which such director was elected, provided that directors initially designated as Class I directors shall serve for a term ending on the date of the 1997 annual meeting, directors initially designated as Class II directors shall serve for a term ending on the date of the 1998 annual meeting, and directors initially designated as Class III directors shall serve for a term ending on the date of the 1999 annual meeting. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no event will a decrease in the number of directors shorten the term of any incumbent director. Vacancies on the Board of Directors resulting from death, resignation, removal or otherwise and newly created directorships resulting from any increase in the number of directors may be filled solely by a majority of the directors then in office (although less than a quorum) or by a sole remaining director, and each director so elected shall hold office for a term that shall coincide with the remaining term of the class to which such director shall have been elected. Whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the nomination, election, term of office, filling of vacancies, removal and other features of such directorships shall not be governed by this ARTICLE SIXTH unless otherwise provided for in the certificate of designation for such classes or series.

(3) No director may be removed from office by the stockholders except for cause with the affirmative vote of the holders of not less than a majority of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

SEVENTH: The Corporation is to have perpetual existence.

EIGHTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation and for the further definition of the powers of the Corporation and its directors and stockholders:

(1) The Board of Directors shall have the power to adopt, amend or repeal the by-laws of the Corporation.

The stockholders may adopt, amend or repeal the by-laws only with the affirmative vote of the holders of not less than 66 2/3% of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(2) Elections of directors need not be by written ballot unless the by-laws of the Corporation so provide.

(3) Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting duly noticed and called in accordance with Delaware Law, and may not be taken by written consent of stockholders without a meeting.

(4) Special meetings of stockholders may be called by the Board of Directors, the Chairman of the Board of Directors, the President or the Secretary of the Corporation and may not be called by any other person. Notwithstanding the foregoing, whenever holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, such holders may call special meetings of such holders pursuant to the certificate of designation for such classes or series.

NINTH: No director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the Law, (iii) under Section 174 of the General Corporation law of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

3. That said Second Amended and Restated Certificate of Incorporation was approved by the affirmative vote of a majority of the outstanding shares of the Corporation's Common Stock at the annual meeting of stockholders.

4. That said Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, VIASAT, INC. has caused this Certificate to be signed by Mark D. Dankberg, its President and Gregory D. Monahan, its Secretary, this 26th day of September, 2000.

VIASAT, INC.
a Delaware corporation

By: /s/Mark D. Dankberg

Name: Mark D. Dankberg
Title: President

ATTEST

/s/Gregory D. Monahan

Name: Gregory D. Monahan
Title: Secretary

THE AMENDED AND RESTATED
1996 EQUITY PARTICIPATION PLAN
OF
VIASAT, INC.

ViaSat, Inc., a Delaware corporation, has adopted The 1996 Equity Participation Plan of ViaSat, Inc. (the "Plan"), effective October 24, 1996, for the benefit of its eligible employees, consultants and directors. The Plan consists of two plans, one for the benefit of key Employees (as such term is defined below) and consultants and one for the benefit of Independent Directors (as such term is defined below).

The purposes of this Plan are as follows:

(1) To provide an additional incentive for directors, key Employees and consultants to further the growth, development and financial success of the Company by personally benefiting through the ownership of Company stock and/or rights which recognize such growth, development and financial success.

(2) To enable the Company to obtain and retain the services of directors, key Employees and consultants considered essential to the long range success of the Company by offering them an opportunity to own stock in the Company and/or rights which will reflect the growth, development and financial success of the Company.

ARTICLE I

DEFINITIONS

1.1 General. Wherever the following terms are used in this Plan they shall have the meanings specified below, unless the context clearly indicates otherwise.

1.2 Award Limit. "Award Limit" shall mean Five Hundred Thousand (500,000) shares of Common Stock.

1.3 Board. "Board" shall mean the Board of Directors of the Company.

1.4 Change in Control. "Change in Control" shall mean a change in ownership or control of the Company effected through either of the following transactions:

(a) any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders which the Board does not recommend such stockholders to accept; or

(b) there is a change in the composition of the Board over a period of thirty-six (36) consecutive months (or less) such that a majority of the Board members (rounded up to the nearest whole number) ceases, by reason of one or more proxy contests for the election of Board members, to be comprised of individuals who either (i) have been Board members continuously since the beginning of such period or (ii) have been elected or nominated for election as Board members during such period by at least a

majority of the Board members described in clause (i) who were still in office at the time such election or nomination was approved by the Board.

1.5 Code. "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.6 Committee. "Committee" shall mean the Compensation Committee of the Board, or another committee of the Board, appointed as provided in Section 9.1.

1.7 Common Stock. "Common Stock" shall mean the common stock of the Company, par value \$0.0001 per share, and any equity security of the Company issued or authorized to be issued in the future, but excluding any preferred stock and any warrants, options or other rights to purchase Common Stock. Debt securities of the Company convertible into Common Stock shall be deemed equity securities of the Company.

1.8 Company. "Company" shall mean ViaSat, Inc., a Delaware corporation.

1.9 Corporate Transaction. "Corporate Transaction" shall mean any of the following stockholder-approved transactions to which the Company is a party:

(a) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the State in which the Company is incorporated, form a holding company or effect a similar reorganization as to form whereupon this Plan and all Options are assumed by the successor entity;

(b) the sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, in complete liquidation or dissolution of the Company in a transaction not covered by the exceptions to clause (a), above; or

(c) any reverse merger in which the Company is the surviving entity but in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred or issued to a person or persons different from those who held such securities immediately prior to such merger.

1.10 Deferred Stock. "Deferred Stock" shall mean Common Stock awarded under Article VII of this Plan.

1.11 Director. "Director" shall mean a member of the Board.

1.12 Dividend Equivalent. "Dividend Equivalent" shall mean a right to receive the equivalent value (in cash or Common Stock) of dividends paid on Common Stock, awarded under Article VII of this Plan.

1.13 Employee. "Employee" shall mean any officer or other employee (as defined in accordance with Section 3401(c) of the Code) of the Company, or of any corporation which is a Subsidiary.

1.14 Exchange Act. "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

1.15 Fair Market Value. "Fair Market Value" of a share of Common Stock as of a given date shall be (i) the closing price of a share of Common Stock on the principal exchange on which shares of Common Stock are then trading, if any (or as reported on any composite index which includes such principal exchange), on the trading day previous to such date, or if shares were not traded on the trading day previous to such date, then on the next preceding date on which a trade occurred, or (ii) if Common Stock

is not traded on an exchange but is quoted on NASDAQ or a successor quotation system, the mean between the closing representative bid and asked prices for the Common Stock on the trading day previous to such date as reported by NASDAQ or such successor quotation system; or (iii) if Common Stock is not publicly traded on an exchange and not quoted on NASDAQ or a successor quotation system, the Fair Market Value of a share of Common Stock as established by the Committee (or the Board, in the case of Options granted to Independent Directors) acting in good faith.

1.16 Grantee. "Grantee" shall mean an Employee or consultant granted a Performance Award, Dividend Equivalent, Stock Payment or Stock Appreciation Right, or an award of Deferred Stock, under this Plan.

1.17 Incentive Stock Option. "Incentive Stock Option" shall mean an option which conforms to the applicable provisions of Section 422 of the Code and which is designated as an Incentive Stock Option by the Committee.

1.18 Independent Director. "Independent Director" shall mean a member of the Board who is not an Employee of the Company.

1.19 Non-Qualified Stock Option. "Non-Qualified Stock Option" shall mean an Option which is not designated as an Incentive Stock Option by the Committee.

1.20 Option. "Option" shall mean a stock option granted under Article III of this Plan. An Option granted under this Plan shall, as determined by the Committee, be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Independent Directors and consultants shall be Non-Qualified Stock Options.

1.21 Optionee. "Optionee" shall mean an Employee, consultant or Independent Director granted an Option under this Plan.

1.22 Performance Award. "Performance Award" shall mean a cash bonus, stock bonus or other performance or incentive award that is paid in cash, Common Stock or a combination of both, awarded under Article VII of this Plan.

1.23 Plan. "Plan" shall mean The 1996 Equity Participation Plan of ViaSat, Inc.

1.24 QDRO. "QDRO" shall mean a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder.

1.25 Restricted Stock. "Restricted Stock" shall mean Common Stock awarded under Article VI of this Plan.

1.26 Restricted Stockholder. "Restricted Stockholder" shall mean an Employee or consultant granted an award of Restricted Stock under Article VI of this Plan.

1.27 Rule 16b-3. "Rule 16b-3" shall mean that certain Rule 16b-3 under the Exchange Act, as such Rule may be amended from time to time.

1.28 Stock Appreciation Right. "Stock Appreciation Right" shall mean a stock appreciation right granted under Article VIII of this Plan.

1.29 Stock Payment. "Stock Payment" shall mean (i) a payment in the form of shares of Common Stock, or (ii) an option or other right to purchase shares of Common Stock, as part of a deferred compensation arrangement, made in lieu of all or any portion of the compensation, including without limitation, salary, bonuses and commissions, that would otherwise become payable to a key Employee or consultant in cash, awarded under Article VII of this Plan.

1.30 Subsidiary. "Subsidiary" shall mean any corporation in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain then owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

1.31 Termination of Consultancy. "Termination of Consultancy" shall mean the time when the engagement of an Optionee, Grantee or Restricted Stockholder as a consultant to the Company or a Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, by resignation, discharge, death or retirement; but excluding terminations where there is a simultaneous commencement of employment with the Company or any Subsidiary. The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Consultancy, including, but not by way of limitation, the question of whether a Termination of Consultancy resulted from a discharge for good cause, and all questions of whether particular leaves of absence constitute Terminations of Consultancy. Notwithstanding any other provision of this Plan, the Company or any Subsidiary has an absolute and unrestricted right to terminate a consultant's service at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in writing.

1.32 Termination of Directorship. "Termination of Directorship" shall mean the time when an Optionee who is an Independent Director ceases to be a Director for any reason, including, but not by way of limitation, a termination by resignation, failure to be elected, death or retirement. The Board, in its sole and absolute discretion, shall determine the effect of all matters and questions relating to Termination of Directorship with respect to Independent Directors.

1.33 Termination of Employment. "Termination of Employment" shall mean the time when the employee-employer relationship between an Optionee, Grantee or Restricted Stockholder and the Company or any Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, a termination by resignation, discharge, death, disability or retirement; but excluding (i) terminations where there is a simultaneous reemployment or continuing employment of an Optionee, Grantee or Restricted Stockholder by the Company or any Subsidiary, (ii) at the discretion of the Committee, terminations which result in a temporary severance of the employee-employer relationship, and (iii) at the discretion of the Committee, terminations which are followed by the simultaneous establishment of a consulting relationship by the Company or a Subsidiary with the former employee. The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Employment, including, but not by way of limitation, the question of whether a Termination of Employment resulted from a discharge for good cause, and all questions of whether particular leaves of absence constitute Terminations of Employment; provided, however, that, unless otherwise determined by the Committee in its discretion, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Employment if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section. Notwithstanding any other provision of this Plan, the Company or any Subsidiary has an absolute and unrestricted right to terminate an Employee's employment at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in writing.

ARTICLE II

SHARES SUBJECT TO PLAN

2.1 Shares Subject to Plan.

(a) The shares of stock subject to Options, awards of Restricted Stock, Performance Awards, Dividend Equivalents, awards of Deferred Stock, Stock Payments or Stock Appreciation Rights shall be Common Stock, initially shares of the Company's Common Stock, par value \$0.0001 per share. The aggregate number of such shares which may be issued upon exercise of such options or rights or upon any such awards under the Plan shall not exceed six-million one hundred thousand (6,100,000). The shares of Common Stock issuable upon exercise of such options or rights or upon any such awards may be either previously authorized but unissued shares or treasury shares.

(b) The maximum number of shares which may be subject to Options or Stock Appreciation Rights granted under the Plan to any individual in any fiscal year shall not exceed the Award Limit. To the extent required by Section 162(m) of the Code, shares subject to Options which are canceled continue to be counted against the Award Limit and if, after grant of an Option, the price of shares subject to such Option is reduced, the transaction is treated as a cancellation of the Option and a grant of a new Option and both the Option deemed to be canceled and the Option deemed to be granted are counted against the Award Limit. Furthermore, to the extent required by Section 162(m) of the Code, if, after grant of a Stock Appreciation Right, the base amount on which stock appreciation is calculated is reduced to reflect a reduction in the Fair Market Value of the Company's Common Stock, the transaction is treated as a cancellation of the Stock Appreciation Right and a grant of a new Stock Appreciation Right and both the Stock Appreciation Right deemed to be canceled and the Stock Appreciation Right deemed to be granted are counted against the Award Limit.

2.2 Add-back of Options and Other Rights. If any Option, or other right to acquire shares of Common Stock under any other award under this Plan, expires or is canceled without having been fully exercised, or is exercised in whole or in part for cash as permitted by this Plan, the number of shares subject to such Option or other right but as to which such Option or other right was not exercised prior to its expiration, cancellation or exercise may again be optioned, granted or awarded hereunder, subject to the limitations of Section 2.1. Furthermore, any shares subject to Options or other awards which are adjusted pursuant to Section 10.3 and become exercisable with respect to shares of stock of another corporation shall be considered canceled and may again be optioned, granted or awarded hereunder, subject to the limitations of Section 2.1. Shares of Common Stock which are delivered by the Optionee or Grantee or withheld by the Company upon the exercise of any Option or other award under this Plan, in payment of the exercise price thereof, may again be optioned, granted or awarded hereunder, subject to the limitations of Section 2.1. If any share of Restricted Stock is forfeited by the Grantee or repurchased by the Company pursuant to Section 6.6 hereof, such share may again be optioned, granted or awarded hereunder, subject to the limitations of Section 2.1. Notwithstanding the provisions of this Section 2.2, no shares of Common Stock may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

ARTICLE III

GRANTING OF OPTIONS

3.1 Eligibility. Any Employee or consultant selected by the Committee pursuant to Section 3.4(a)(i) shall be eligible to be granted an Option. Each Independent Director of the Company shall be eligible to be granted Options at the times and in the manner set forth in Section 3.4(d).

3.2 Disqualification for Stock Ownership. No person may be granted an Incentive Stock Option under this Plan if such person, at the time the Incentive Stock Option is granted, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any then existing Subsidiary or parent corporation (within the meaning of Section 422 of the Code) unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code.

3.3 Qualification of Incentive Stock Options. No Incentive Stock Option shall be granted to any person who is not an Employee.

3.4 Granting of Options

(a) The Committee shall from time to time, in its absolute discretion, and subject to applicable limitations of this Plan:

(i) Determine which Employees are key Employees and select from among the key Employees or consultants (including Employees or consultants who have previously received Options or other awards under this Plan) such of them as in its opinion should be granted Options;

(ii) Subject to the Award Limit, determine the number of shares to be subject to such Options granted to the selected key Employees or consultants;

(iii) Subject to Section 3.3, determine whether such Options are to be Incentive Stock Options or Non-Qualified Stock Options and whether such Options are to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code; and

(iv) Determine the terms and conditions of such Options, consistent with this Plan; provided, however, that the terms and conditions of Options intended to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code shall include, but not be limited to, such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code.

(b) Upon the selection of a key Employee or consultant to be granted an Option, the Committee shall instruct the Secretary of the Company to issue the Option and may impose such conditions on the grant of the Option as it deems appropriate. Without limiting the generality of the preceding sentence, the Committee may, in its discretion and on such terms as it deems appropriate, require as a condition on the grant of an Option to an Employee or consultant that the Employee or consultant surrender for cancellation some or all of the unexercised Options, awards of Restricted Stock or Deferred Stock, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments or other rights which have been previously granted to him under this Plan or otherwise. An Option, the grant of which is conditioned upon such surrender, may have an option price lower (or higher) than the exercise price of such surrendered Option or other award, may cover the same (or a lesser or greater) number of shares as such surrendered Option or other award, may contain such other terms as the Committee deems appropriate, and shall be exercisable in accordance with its terms, without regard to the number of shares, price, exercise period or any other term or condition of such surrendered Option or other award.

(c) Any Incentive Stock Option granted under this Plan may be modified by the Committee to disqualify such option from treatment as an "incentive stock option" under Section 422 of the Code.

(d) During the term of the Plan, each person who is an Independent Director as of the date of the consummation of the initial public offering of Common Stock automatically shall be granted (i) an Option

to purchase Fifteen Thousand (15,000) shares of Common Stock (subject to adjustment as provided in Section 10.3) on the date of such initial public offering and (ii) an Option to purchase Eight Thousand (8,000) shares of Common Stock (subject to adjustment as provided in Section 10.3) on the date of each annual meeting of stockholders after such initial public offering at which directors are elected to the Board. During the term of the Plan, a person who is initially elected to the Board after the consummation of the initial public offering of Common Stock and who is an Independent Director at the time of such initial election automatically shall be granted (i) an Option to purchase Fifteen Thousand (15,000) shares of Common Stock (subject to adjustment as provided in Section 10.3) on the date of such initial election and (ii) an Option to purchase Eight Thousand (8,000) shares of Common Stock (subject to adjustment as provided in Section 10.3) on the date of each annual meeting of stockholders after such initial election at which directors are elected to the Board. Members of the Board who are employees of the Company who subsequently retire from the Company and remain on the Board will not receive an initial Option grant pursuant to clause (i) of the preceding sentence, but to the extent that they are otherwise eligible, will receive, after retirement from employment with the Company, Options as described in clause (ii) of the preceding sentence. All of the foregoing Option grants authorized by this Section 3.4(d) are subject to stockholder approval of the Plan.

ARTICLE IV

TERMS OF OPTIONS

4.1 Option Agreement. Each Option shall be evidenced by a written Stock Option Agreement, which shall be executed by the Optionee and an authorized officer of the Company and which shall contain such terms and conditions as the Committee (or the Board, in the case of Options granted to Independent Directors) shall determine, consistent with this Plan. Stock Option Agreements evidencing Options intended to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code. Stock Option Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code.

4.2 Option Price. The price per share of the shares subject to each Option shall be set by the Committee; provided, however, that such price shall be no less than the par value of a share of Common Stock, unless otherwise permitted by applicable state law, and (i) in the case of Incentive Stock Options and Options intended to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code, such price shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date the Option is granted; (ii) in the case of Incentive Stock Options granted to an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any Subsidiary or parent corporation thereof (within the meaning of Section 422 of the Code) such price shall not be less than 110% of the Fair Market Value of a share of Common Stock on the date the Option is granted; and (iii) in the case of Options granted to Independent Directors, such price shall equal 100% of the Fair Market Value of a share of Common Stock on the date the Option is granted; provided, however, that the price of each share subject to each Option granted to Independent Directors on the date of the initial public offering of Common Stock shall equal the initial public offering price (net of underwriting discounts and commissions) per share of Common Stock.

4.3 Option Term. The term of an Option shall be set by the Committee in its discretion; provided, however, that, (i) in the case of Options granted to Independent Directors, the term shall be ten (10) years from the date the Option is granted, without variation or acceleration hereunder, but subject to Section 5.6, and (ii) in the case of Incentive Stock Options, the term shall not be more than ten (10) years from the date the Incentive Stock Option is granted, or five (5) years from such date if the Incentive Stock Option

is granted to an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any Subsidiary or parent corporation thereof (within the meaning of Section 422 of the Code). Except as limited by requirements of Section 422 of the Code and regulations and rulings thereunder applicable to Incentive Stock Options, the Committee may extend the term of any outstanding Option in connection with any Termination of Employment or Termination of Consultancy of the Optionee, or amend any other term or condition of such Option relating to such a termination.

4.4 Option Vesting

(a) The period during which the right to exercise an Option in whole or in part vests in the Optionee shall be set by the Committee and the Committee may determine that an Option may not be exercised in whole or in part for a specified period after it is granted; provided, however, that, unless the Committee otherwise provides in the terms of the Option or otherwise, no Option shall be exercisable by any Optionee who is then subject to Section 16 of the Exchange Act within the period ending six months and one day after the date the Option is granted; and provided, further, that Options granted to Independent Directors shall become exercisable in cumulative annual installments of 33 1/3% on each of the first, second and third anniversaries of the date of Option grant, without variation or acceleration hereunder except as provided in Section 10.3(b). At any time after grant of an Option, the Committee may, in its sole and absolute discretion and subject to whatever terms and conditions it selects, accelerate the period during which an Option (except an Option granted to an Independent Director) vests.

(b) No portion of an Option which is unexercisable at Termination of Employment, Termination of Directorship or Termination of Consultancy, as applicable, shall thereafter become exercisable, except as may be otherwise provided by the Committee in the case of Options granted to Employees or consultants either in the Stock Option Agreement or by action of the Committee following the grant of the Option.

(c) To the extent that the aggregate Fair Market Value of stock with respect to which "incentive stock options" (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by an Optionee during any calendar year (under the Plan and all other incentive stock option plans of the Company and any Subsidiary) exceeds \$100,000, such Options shall be treated as Non-Qualified Options to the extent required by Section 422 of the Code. The rule set forth in the preceding sentence shall be applied by taking Options into account in the order in which they were granted. For purposes of this Section 4.4(c), the Fair Market Value of stock shall be determined as of the time the Option with respect to such stock is granted.

4.5 Consideration. In consideration of the granting of an Option, the Optionee shall agree, in the written Stock Option Agreement, to remain in the employ of (or to consult for or to serve as an Independent Director of, as applicable) the Company or any Subsidiary for a period of at least one year (or such shorter period as may be fixed in the Stock Option Agreement or by action of the Committee following grant of the Option) after the Option is granted (or, in the case of an Independent Director, until the next annual meeting of stockholders of the Company). Nothing in this Plan or in any Stock Option Agreement hereunder shall confer upon any Optionee any right to continue in the employ of, or as a consultant for, the Company or any Subsidiary, or as a director of the Company, or shall interfere with or restrict in any way the rights of the Company and any Subsidiary, which are hereby expressly reserved, to discharge any Optionee at any time for any reason whatsoever, with or without good cause.

ARTICLE V

EXERCISE OF OPTIONS

5.1 Partial Exercise. An exercisable Option may be exercised in whole or in part. However, an Option shall not be exercisable with respect to fractional shares and the Committee (or the Board, in the case of Options granted to Independent Directors) may require that, by the terms of the Option, a partial exercise be with respect to a minimum number of shares.

5.2 Manner of Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company or his office:

(a) A written notice complying with the applicable rules established by the Committee (or the Board, in the case of Options granted to Independent Directors) stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Optionee or other person then entitled to exercise the Option or such portion;

(b) Such representations and documents as the Committee (or the Board, in the case of Options granted to Independent Directors), in its absolute discretion, deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act of 1933, as amended, and any other federal or state securities laws or regulations. The Committee or Board may, in its absolute discretion, also take whatever additional actions it deems appropriate to effect such compliance including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars;

(c) In the event that the Option shall be exercised pursuant to Section 10.1 by any person or persons other than the Optionee, appropriate proof of the right of such person or persons to exercise the Option; and

(d) Full cash payment to the Secretary of the Company for the shares with respect to which the Option, or portion thereof, is exercised. However, the Committee (or the Board, in the case of Options granted to Independent Directors), may in its discretion (i) allow a delay in payment up to thirty (30) days from the date the Option, or portion thereof, is exercised; (ii) allow payment, in whole or in part, through the delivery of shares of Common Stock owned by the Optionee, duly endorsed for transfer to the Company with a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof; (iii) allow payment, in whole or in part, through the surrender of shares of Common Stock then issuable upon exercise of the Option having a Fair Market Value on the date of Option exercise equal to the aggregate exercise price of the Option or exercised portion thereof; (iv) allow payment, in whole or in part, through the delivery of property of any kind which constitutes good and valuable consideration; (v) allow payment, in whole or in part, through the delivery of a full recourse promissory note bearing interest (at no less than such rate as shall then preclude the imputation of interest under the Code) and payable upon such terms as may be prescribed by the Committee or the Board; (vi) allow payment, in whole or in part, through the delivery of a notice that the Optionee has placed a market sell order with a broker with respect to shares of Common Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; or (vii) allow payment through any combination of the consideration provided in the foregoing subparagraphs (ii), (iii), (iv), (v) and (vi). In the case of a promissory note, the Committee (or the Board, in the case of Options granted to Independent Directors) may also prescribe the form of such note and the security to be given for such note. The Option may not be exercised, however, by

delivery of a promissory note or by a loan from the Company when or where such loan or other extension of credit is prohibited by law.

5.3 Conditions to Issuance of Stock Certificates. The Company shall not be required to issue or deliver any certificate or certificates for shares of stock purchased upon the exercise of any Option or portion thereof prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such class of stock is then listed;

(b) The completion of any registration or other qualification of such shares under any state or federal law, or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body which the Committee or Board shall, in its absolute discretion, deem necessary or advisable;

(c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Committee (or Board, in the case of Options granted to Independent Directors) shall, in its absolute discretion, determine to be necessary or advisable;

(d) The lapse of such reasonable period of time following the exercise of the Option as the Committee (or Board, in the case of Options granted to Independent Directors) may establish from time to time for reasons of administrative convenience; and

(e) The receipt by the Company of full payment for such shares, including payment of any applicable withholding tax.

5.4 Rights as Stockholders. The holders of Options shall not be, nor have any of the rights or privileges of, stockholders of the Company in respect of any shares purchasable upon the exercise of any part of an Option unless and until certificates representing such shares have been issued by the Company to such holders.

5.5 Ownership and Transfer Restrictions. The Committee (or Board, in the case of Options granted to Independent Directors), in its absolute discretion, may impose such restrictions on the ownership and transferability of the shares purchasable upon the exercise of an Option as it deems appropriate. Any such restriction shall be set forth in the respective Stock Option Agreement and may be referred to on the certificates evidencing such shares. The Committee may require the Employee to give the Company prompt notice of any disposition of shares of Common Stock acquired by exercise of an Incentive Stock Option within (i) two years from the date of granting such Option to such Employee or (ii) one year after the transfer of such shares to such Employee. The Committee may direct that the certificates evidencing shares acquired by exercise of an Option refer to such requirement to give prompt notice of disposition.

5.6 Limitations on Exercise of Options Granted to Independent Directors. No Option granted to an Independent Director may be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration of twelve (12) months from the date of the Optionee's death;

(b) the expiration of twelve (12) months from the date of the Optionee's Termination of Directorship by reason of his permanent and total disability (within the meaning of Section 22(e)(3) of the Code);

(c) the expiration of three (3) months from the date of the Optionee's Termination of Directorship for any reason other than such Optionee's death or his permanent and total disability, unless the Optionee dies within said three-month period; or

(d) The expiration of ten (10) years from the date the Option was granted.

ARTICLE VI

AWARD OF RESTRICTED STOCK

6.1 Award of Restricted Stock

(a) The Committee may from time to time, in its absolute discretion:

(i) Select from among the key Employees or consultants (including Employees or consultants who have previously received other awards under this Plan) such of them as in its opinion should be awarded Restricted Stock; and

(ii) Determine the purchase price, if any, and other terms and conditions applicable to such Restricted Stock, consistent with this Plan.

(b) The Committee shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that such purchase price shall be no less than the par value of the Common Stock to be purchased, unless otherwise permitted by applicable state law. In all cases, legal consideration shall be required for each issuance of Restricted Stock.

(c) Upon the selection of a key Employee or consultant to be awarded Restricted Stock, the Committee shall instruct the Secretary of the Company to issue such Restricted Stock and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate.

6.2 Restricted Stock Agreement. Restricted Stock shall be issued only pursuant to a written Restricted Stock Agreement, which shall be executed by the selected key Employee or consultant and an authorized officer of the Company and which shall contain such terms and conditions as the Committee shall determine, consistent with this Plan.

6.3 Consideration. As consideration for the issuance of Restricted Stock, in addition to payment of any purchase price, the Restricted Stockholder shall agree, in the written Restricted Stock Agreement, to remain in the employ of, or to consult for, the Company or any Subsidiary for a period of at least one year after the Restricted Stock is issued (or such shorter period as may be fixed in the Restricted Stock Agreement or by action of the Committee following grant of the Restricted Stock). Nothing in this Plan or in any Restricted Stock Agreement hereunder shall confer on any Restricted Stockholder any right to continue in the employ of, or as a consultant for, the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and any Subsidiary, which are hereby expressly reserved, to discharge any Restricted Stockholder at any time for any reason whatsoever, with or without good cause.

6.4 Rights as Stockholders. Upon delivery of the shares of Restricted Stock to the escrow holder pursuant to Section 6.7, the Restricted Stockholder shall have, unless otherwise provided by the Committee, all the rights of a stockholder with respect to said shares, subject to the restrictions in his Restricted Stock Agreement, including the right to receive all dividends and other distributions paid or made with respect to the shares; provided, however, that in the discretion of the Committee, any

extraordinary distributions with respect to the Common Stock shall be subject to the restrictions set forth in Section 6.5.

6.5 Restriction. All shares of Restricted Stock issued under this Plan (including any shares received by holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of each individual Restricted Stock Agreement, be subject to such restrictions as the Committee shall provide, which restrictions may include, without limitation, restrictions concerning voting rights and transferability and restrictions based on duration of employment with the Company, Company performance and individual performance; provided, however, that, unless the Committee otherwise provides in the terms of the Restricted Stock Agreement or otherwise, no share of Restricted Stock granted to a person subject to Section 16 of the Exchange Act shall be sold, assigned or otherwise transferred until at least six months and one day have elapsed from the date on which the Restricted Stock was issued, and provided, further, that by action taken after the Restricted Stock is issued, the Committee may, on such terms and conditions as it may determine to be appropriate, remove any or all of the restrictions imposed by the terms of the Restricted Stock Agreement. Restricted Stock may not be sold or encumbered until all restrictions are terminated or expire. Unless provided otherwise by the Committee, if no consideration was paid by the Restricted Stockholder upon issuance, a Restricted Stockholder's rights in unvested Restricted Stock shall lapse upon Termination of Employment or, if applicable, upon Termination of Consultancy with the Company.

6.6 Repurchase of Restricted Stock. The Committee shall provide in the terms of each individual Restricted Stock Agreement that the Company shall have the right to repurchase from the Restricted Stockholder the Restricted Stock then subject to restrictions under the Restricted Stock Agreement immediately upon a Termination of Employment or, if applicable, upon a Termination of Consultancy between the Restricted Stockholder and the Company, at a cash price per share equal to the price paid by the Restricted Stockholder for such Restricted Stock; provided, however, that provision may be made that no such right of repurchase shall exist in the event of a Termination of Employment or Termination of Consultancy without cause, or following a change in control of the Company or because of the Restricted Stockholder's retirement, death or disability, or otherwise.

6.7 Escrow. The Secretary of the Company or such other escrow holder as the Committee may appoint shall retain physical custody of each certificate representing Restricted Stock until all of the restrictions imposed under the Restricted Stock Agreement with respect to the shares evidenced by such certificate expire or shall have been removed.

6.8 Legend. In order to enforce the restrictions imposed upon shares of Restricted Stock hereunder, the Committee shall cause a legend or legends to be placed on certificates representing all shares of Restricted Stock that are still subject to restrictions under Restricted Stock Agreements, which legend or legends shall make appropriate reference to the conditions imposed thereby.

ARTICLE VII

PERFORMANCE AWARDS, DIVIDEND EQUIVALENTS, DEFERRED STOCK, STOCK PAYMENTS

7.1 Performance Awards. Any key Employee or consultant selected by the Committee may be granted one or more Performance Awards. The value of such Performance Awards may be linked to the market value, book value, net profits or other measure of the value of Common Stock or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee, or may be based upon the appreciation in the market value, book value, net profits or other measure of the value of a specified number of shares of

Common Stock over a fixed period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular key Employee or consultant.

7.2 **Equivalents.** Any key Employee or consultant selected by the Committee may be granted Dividend Equivalents based on the dividends declared on Common Stock, to be credited as of dividend payment dates, during the period between the date an Option, Stock Appreciation Right, Deferred Stock or Performance Award is granted, and the date such Option, Stock Appreciation Right, Deferred Stock or Performance Award is exercised, vests or expires, as determined by the Committee. Such Dividend Equivalents shall be converted to cash or additional shares of Common Stock by such formula and at such time and subject to such limitations as may be determined by the Committee. With respect to Dividend Equivalents granted with respect to Options intended to be qualified performance-based compensation for purposes of Section 162(m) of the Code, such Dividend Equivalents shall be payable regardless of whether such Option is exercised.

7.3 **Stock Payments.** Any key Employee or consultant selected by the Committee may receive Stock Payments in the manner determined from time to time by the Committee. The number of shares shall be determined by the Committee and may be based upon the Fair Market Value, book value, net profits or other measure of the value of Common Stock or other specific performance criteria determined appropriate by the Committee, determined on the date such Stock Payment is made or on any date thereafter.

7.4 **Deferred Stock.** Any key Employee or consultant selected by the Committee may be granted an award of Deferred Stock in the manner determined from time to time by the Committee. The number of shares of Deferred Stock shall be determined by the Committee and may be linked to the market value, book value, net profits or other measure of the value of Common Stock or other specific performance criteria determined to be appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. Common Stock underlying a Deferred Stock award will not be issued until the Deferred Stock award has vested, pursuant to a vesting schedule or performance criteria set by the Committee. Unless otherwise provided by the Committee, a Grantee of Deferred Stock shall have no rights as a Company stockholder with respect to such Deferred Stock until such time as the award has vested and the Common Stock underlying the award has been issued.

7.5 **Performance Award Agreement, Dividend Equivalent Agreement, Deferred Stock Agreement, Stock Payment Agreement.** Each Performance Award, Dividend Equivalent, award of Deferred Stock and/or Stock Payment shall be evidenced by a written agreement, which shall be executed by the Grantee and an authorized Officer of the Company and which shall contain such terms and conditions as the Committee shall determine, consistent with this Plan.

7.6 **Term.** The term of a Performance Award, Dividend Equivalent, award of Deferred Stock and/or Stock Payment shall be set by the Committee in its discretion.

7.7 **Exercise Upon Termination of Employment.** A Performance Award, Dividend Equivalent, award of Deferred Stock and/or Stock Payment is exercisable or payable only while the Grantee is an Employee or consultant; provided that the Committee may determine that the Performance Award, Dividend Equivalent, award of Deferred Stock and/or Stock Payment may be exercised or paid subsequent to Termination of Employment or Termination of Consultancy without cause, or following a change in control of the Company, or because of the Grantee's retirement, death or disability, or otherwise.

7.8 Payment on Exercise. Payment of the amount determined under Section 7.1 or 7.2 above shall be in cash, in Common Stock or a combination of both, as determined by the Committee. To the extent any payment under this Article VII is effected in Common Stock, it shall be made subject to satisfaction of all provisions of Section 5.3.

7.9 Consideration. In consideration of the granting of a Performance Award, Dividend Equivalent, award of Deferred Stock and/or Stock Payment, the Grantee shall agree, in a written agreement, to remain in the employ of, or to consult for, the Company or any Subsidiary for a period of at least one year after such Performance Award, Dividend Equivalent, award of Deferred Stock and/or Stock Payment is granted (or such shorter period as may be fixed in such agreement or by action of the Committee following such grant). Nothing in this Plan or in any agreement hereunder shall confer on any Grantee any right to continue in the employ of, or as a consultant for, the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and any Subsidiary, which are hereby expressly reserved, to discharge any Grantee at any time for any reason whatsoever, with or without good cause.

ARTICLE VIII

STOCK APPRECIATION RIGHTS

8.1 Grant of Stock Appreciation Rights. A Stock Appreciation Right may be granted to any key Employee or consultant selected by the Committee. A Stock Appreciation Right may be granted (i) in connection and simultaneously with the grant of an Option, (ii) with respect to a previously granted Option, or (iii) independent of an Option. A Stock Appreciation Right shall be subject to such terms and conditions not inconsistent with this Plan as the Committee shall impose and shall be evidenced by a written Stock Appreciation Right Agreement, which shall be executed by the Grantee and an authorized officer of the Company. The Committee, in its discretion, may determine whether a Stock Appreciation Right is to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code and Stock Appreciation Right Agreements evidencing Stock Appreciation Rights intended to so qualify shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code. Without limiting the generality of the foregoing, the Committee may, in its discretion and on such terms as it deems appropriate, require as a condition of the grant of a Stock Appreciation Right to an Employee or consultant that the Employee or consultant surrender for cancellation some or all of the unexercised Options, awards of Restricted Stock or Deferred Stock, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments, or other rights which have been previously granted to him under this Plan or otherwise. A Stock Appreciation Right, the grant of which is conditioned upon such surrender, may have an exercise price lower (or higher) than the exercise price of the surrendered Option or other award, may cover the same (or a lesser or greater) number of shares as such surrendered Option or other award, may contain such other terms as the Committee deems appropriate, and shall be exercisable in accordance with its terms, without regard to the number of shares, price, exercise period or any other term or condition of such surrendered Option or other award.

8.2 Coupled Stock Appreciation Rights

(a) A Coupled Stock Appreciation Right ("CSAR") shall be related to a particular Option and shall be exercisable only when and to the extent the related Option is exercisable.

(b) A CSAR may be granted to the Grantee for no more than the number of shares subject to the simultaneously or previously granted Option to which it is coupled.

(c) A CSAR shall entitle the Grantee (or other person entitled to exercise the Option pursuant to this Plan) to surrender to the Company unexercised a portion of the Option to which the CSAR relates (to the extent then exercisable pursuant to its terms) and to receive from the Company in exchange therefor an amount determined by multiplying the difference obtained by subtracting the Option exercise price from the Fair Market Value of a share of Common Stock on the date of exercise of the CSAR by the number of shares of Common Stock with respect to which the CSAR shall have been exercised, subject to any limitations the Committee may impose.

8.3 Independent Stock Appreciation Rights

(a) An Independent Stock Appreciation Right ("ISAR") shall be unrelated to any Option and shall have a term set by the Committee. An ISAR shall be exercisable in such installments as the Committee may determine. An ISAR shall cover such number of shares of Common Stock as the Committee may determine; provided, however, that unless the Committee otherwise provides in the terms of the ISAR or otherwise, no ISAR granted to a person subject to Section 16 of the Exchange Act shall be exercisable until at least six months have elapsed from (but excluding) the date on which the Option was granted. The exercise price per share of Common Stock subject to each ISAR shall be set by the Committee. An ISAR is exercisable only while the Grantee is an Employee or consultant; provided that the Committee may determine that the ISAR may be exercised subsequent to Termination of Employment or Termination of Consultancy without cause, or following a change in control of the Company, or because of the Grantee's retirement, death or disability, or otherwise.

(b) An ISAR shall entitle the Grantee (or other person entitled to exercise the ISAR pursuant to this Plan) to exercise all or a specified portion of the ISAR (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying the difference obtained by subtracting the exercise price per share of the ISAR from the Fair Market Value of a share of Common Stock on the date of exercise of the ISAR by the number of shares of Common Stock with respect to which the ISAR shall have been exercised, subject to any limitations the Committee may impose.

8.4 Payment and Limitations on Exercise

(a) Payment of the amount determined under Section 8.2(c) and 8.3(b) above shall be in cash, in Common Stock (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised) or a combination of both, as determined by the Committee. To the extent such payment is effected in Common Stock it shall be made subject to satisfaction of all provisions of Section 5.3 above pertaining to Options.

(b) Grantees of Stock Appreciation Rights may be required to comply with any timing or other restrictions with respect to the settlement or exercise of a Stock Appreciation Right, including a window-period limitation, as may be imposed in the discretion of the Board or Committee.

8.5 Consideration. In consideration of the granting of a Stock Appreciation Right, the Grantee shall agree, in the written Stock Appreciation Right Agreement, to remain in the employ of, or to consult for, the Company or any Subsidiary for a period of at least one year after the Stock Appreciation Right is granted (or such shorter period as may be fixed in the Stock Appreciation Right Agreement or by action of the Committee following grant of the Restricted Stock). Nothing in this Plan or in any Stock Appreciation Right Agreement hereunder shall confer on any Grantee any right to continue in the employ of, or as a consultant for, the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and any Subsidiary, which are hereby expressly reserved, to discharge any Grantee at any time for any reason whatsoever, with or without good cause.

ARTICLE IX

ADMINISTRATION

9.1 Compensation Committee. Prior to the Company's initial registration of Common Stock under Section 12 of the Exchange Act, the Compensation Committee shall consist of the entire Board. Following such registration, the Compensation Committee (or another committee or a subcommittee of the Board assuming the functions of the Committee under this Plan) shall consist solely of two or more Independent Directors appointed by and holding office at the pleasure of the Board, each of whom is both a "non-employee director" as defined by Rule 16b-3 and an "outside director" for purposes of Section 162(m) of the Code. Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee may be filled by the Board.

9.2 Duties and Powers of Committee. It shall be the duty of the Committee to conduct the general administration of this Plan in accordance with its provisions. The Committee shall have the power to interpret this Plan and the agreements pursuant to which Options, awards of Restricted Stock or Deferred Stock, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments are granted or awarded, and to adopt such rules for the administration, interpretation, and application of this Plan as are consistent therewith and to interpret, amend or revoke any such rules. Notwithstanding the foregoing, the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Options granted to Independent Directors. Any such grant or award under this Plan need not be the same with respect to each Optionee, Grantee or Restricted Stockholder. Any such interpretations and rules with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under this Plan except with respect to matters which under Rule 16b-3 or Section 162(m) of the Code, or any regulations or rules issued thereunder, are required to be determined in the sole discretion of the Committee.

9.3 Majority Rule; Unanimous Written Consent. The Committee shall act by a majority of its members in attendance at a meeting at which a quorum is present or by a memorandum or other written instrument signed by all members of the Committee.

9.4 Compensation; Professional Assistance; Good Faith Actions. Members of the Committee shall receive such compensation for their services as members as may be determined by the Board. All expenses and liabilities which members of the Committee incur in connection with the administration of this Plan shall be borne by the Company. The Committee may, with the approval of the Board, employ attorneys, consultants, accountants, appraisers, brokers, or other persons. The Committee, the Company and the Company's officers and Directors shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Committee or the Board in good faith shall be final and binding upon all Optionees, Grantees, Restricted Stockholders, the Company and all other interested persons. No members of the Committee or Board shall be personally liable for any action, determination or interpretation made in good faith with respect to this Plan, Options, awards of Restricted Stock or Deferred Stock, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments, and all members of the Committee and the Board shall be fully protected by the Company in respect of any such action, determination or interpretation.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Not Transferable. Options, Restricted Stock awards, Deferred Stock awards, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments under this Plan may not be sold, pledged, assigned, or transferred in any manner other than by will or the laws of descent and distribution or pursuant to a QDRO, unless and until such rights or awards have been exercised, or the shares underlying such rights or awards have been issued, and all restrictions applicable to such shares have lapsed. No Option, Restricted Stock award, Deferred Stock award, Performance Award, Stock Appreciation Right, Dividend Equivalent or Stock Payment or interest or right therein shall be liable for the debts, contracts or engagements of the Optionee, Grantee or Restricted Stockholder or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

During the lifetime of the Optionee or Grantee, only he may exercise an Option or other right or award (or any portion thereof) granted to him under the Plan, unless it has been disposed of pursuant to a QDRO. After the death of the Optionee or Grantee, any exercisable portion of an Option or other right or award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Stock Option Agreement or other agreement, be exercised by his personal representative or by any person empowered to do so under the deceased Optionee's or Grantee's will or under the then applicable laws of descent and distribution.

10.2 Amendment, Suspension or Termination of this Plan. Except as otherwise provided in this Section 10.2, this Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, without approval of the Company's stockholders given within twelve months before or after the action by the Board or the Committee, no action of the Board or the Committee may, except as provided in Section 10.3, increase the limits imposed in Section 2.1 on the maximum number of shares which may be issued under this Plan or modify the Award Limit, and no action of the Board or the Committee may be taken that would otherwise require stockholder approval as a matter of applicable law, regulation or rule. No amendment, suspension or termination of this Plan shall, without the consent of the holder of Options, Restricted Stock awards, Deferred Stock awards, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments, alter or impair any rights or obligations under any Options, Restricted Stock awards, Deferred Stock awards, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments theretofore granted or awarded, unless the award itself otherwise expressly so provides. No Options, Restricted Stock, Deferred Stock, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments may be granted or awarded during any period of suspension or after termination of this Plan, and in no event may any Incentive Stock Option be granted under this Plan after the first to occur of the following events:

(a) The expiration of ten years from the date the Plan is adopted by the Board; or

(b) The expiration of ten years from the date the Plan is approved by the Company's stockholders under Section 10.4.

10.3 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events.

(a) Subject to Section 10.3(d), in the event that the Committee (or the Board, in the case of Options granted to Independent Directors) determines that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, reclassification, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company (including, but not limited to, a Corporate Transaction), or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event, in the Committee's sole discretion (or in the case of Options granted to Independent Directors, the Board's sole discretion), affects the Common Stock such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to an Option, Restricted Stock award, Performance Award, Stock Appreciation Right, Dividend Equivalent, Deferred Stock award or Stock Payment, then the Committee (or the Board, in the case of Options granted to Independent Directors) shall, in such manner as it may deem equitable, adjust any or all of

(i) the number and kind of shares of Common Stock (or other securities or property) with respect to which Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments may be granted under the Plan, or which may be granted as Restricted Stock or Deferred Stock (including, but not limited to, adjustments of the limitations in Section 2.1 on the maximum number and kind of shares which may be issued and adjustments of the Award Limit),

(ii) the number and kind of shares of Common Stock (or other securities or property) subject to outstanding Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents, or Stock Payments, and in the number and kind of shares of outstanding Restricted Stock or Deferred Stock, and

(iii) the grant or exercise price with respect to any Option, Performance Award, Stock Appreciation Right, Dividend Equivalent or Stock Payment.

(b) Subject to Sections 10.3(b)(vii) and 10.3(d), in the event of any Corporate Transaction or other transaction or event described in Section 10.3(a) or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in applicable laws, regulations, or accounting principles, the Committee (or the Board, in the case of Options granted to Independent Directors) in its discretion is hereby authorized to take any one or more of the following actions whenever the Committee (or the Board, in the case of Options granted to Independent Directors) determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any option, right or other award under this Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) In its sole and absolute discretion, and on such terms and conditions as it deems appropriate, the Committee (or the Board, in the case of Options granted to Independent Directors) may provide, either by the terms of the agreement or by action taken prior to the occurrence of such transaction or event and either automatically or upon the optionee's request, for either the purchase of any such Option, Performance Award, Stock Appreciation Right, Dividend Equivalent, or Stock Payment, or any Restricted Stock or Deferred Stock for an amount of cash equal to the amount that could have been attained upon the exercise of such option, right or award or realization of the optionee's rights had such

option, right or award been currently exercisable or payable or fully vested or the replacement of such option, right or award with other rights or property selected by the Committee (or the Board, in the case of Options granted to Independent Directors) in its sole discretion;

(ii) In its sole and absolute discretion, the Committee (or the Board, in the case of Options granted to Independent Directors) may provide, either by the terms of such Option, Performance Award, Stock Appreciation Right, Dividend Equivalent, or Stock Payment, or Restricted Stock or Deferred Stock or by action taken prior to the occurrence of such transaction or event that it cannot be exercised after such event;

(iii) In its sole and absolute discretion, and on such terms and conditions as it deems appropriate, the Committee (or the Board, in the case of Options granted to Independent Directors) may provide, either by the terms of such Option, Performance Award, Stock Appreciation Right, Dividend Equivalent, or Stock Payment, or Restricted Stock or Deferred Stock or by action taken prior to the occurrence of such transaction or event, that for a specified period of time prior to such transaction or event, such option, right or award shall be exercisable as to all shares covered thereby, notwithstanding anything to the contrary in (i) Section 4.4 or (ii) the provisions of such Option, Performance Award, Stock Appreciation Right, Dividend Equivalent, or Stock Payment, or Restricted Stock or Deferred Stock;

(iv) In its sole and absolute discretion, and on such terms and conditions as it deems appropriate, the Committee (or the Board, in the case of Options granted to Independent Directors) may provide, either by the terms of such Option, Performance Award, Stock Appreciation Right, Dividend Equivalent, or Stock Payment, or Restricted Stock or Deferred Stock or by action taken prior to the occurrence of such transaction or event, that upon such event, such option, right or award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(v) In its sole and absolute discretion, and on such terms and conditions as it deems appropriate, the Committee (or the Board, in the case of Options granted to Independent Directors) may make adjustments in the number and type of shares of Common Stock (or other securities or property) subject to outstanding Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents, or Stock Payments, and in the number and kind of outstanding Restricted Stock or Deferred Stock and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding options, rights and awards and options, rights and awards which may be granted in the future;

(vi) In its sole and absolute discretion, and on such terms and conditions as it deems appropriate, the Committee may provide either by the terms of a Restricted Stock award or Deferred Stock award or by action taken prior to the occurrence of such event that, for a specified period of time prior to such event, the restrictions imposed under a Restricted Stock Agreement or a Deferred Stock Agreement upon some or all shares of Restricted Stock or Deferred Stock may be terminated, and, in the case of Restricted Stock, some or all shares of such Restricted Stock may cease to be subject to repurchase under Section 6.6 or forfeiture under Section 6.5 after such event; and

(vii) None of the foregoing discretionary actions taken under this Section 10.3(b) shall be permitted with respect to Options granted under Section 3.4(d) to Independent Directors to the extent that such discretion would be inconsistent with the applicable exemptive conditions of Rule 16b-3. In the event of a Change in Control or a Corporate Transaction, to the extent that the Board does not have the

ability under Rule 16b-3 to take or to refrain from taking the discretionary actions set forth in Section 10.3(b)(iii) above, each Option granted to an Independent Director shall be exercisable as to all shares covered thereby upon such Change in Control or during the five days immediately preceding the consummation of such Corporate Transaction and subject to such consummation, notwithstanding anything to the contrary in Section 4.4 or the vesting schedule of such Options. In the event of a Corporate Transaction, to the extent that the Board does not have the ability under Rule 16b-3 to take or to refrain from taking the discretionary actions set forth in Section 10.3(b)(ii) above, no Option granted to an Independent Director may be exercised following such Corporate Transaction unless such Option is, in connection with such Corporate Transaction, either assumed by the successor or survivor corporation (or parent or subsidiary thereof) or replaced with a comparable right with respect to shares of the capital stock of the successor or survivor corporation (or parent or subsidiary thereof).

(c) Subject to Section 10.3(d) and 10.8, the Committee (or the Board, in the case of Options granted to Independent Directors) may, in its discretion, include such further provisions and limitations in any Option, Performance Award, Stock Appreciation Right, Dividend Equivalent, or Stock Payment, or Restricted Stock or Deferred Stock agreement or certificate, as it may deem equitable and in the best interests of the Company.

(d) With respect to Incentive Stock Options and Options and Stock Appreciation Rights intended to qualify as performance-based compensation under Section 162(m), no adjustment or action described in this Section 10.3 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Plan to violate Section 422(b)(1) of the Code or would cause such option or stock appreciation right to fail to so qualify under Section 162(m), as the case may be, or any successor provisions thereto. Furthermore, no such adjustment or action shall be authorized to the extent such adjustment or action would result in short-swing profits liability under Section 16 or violate the exemptive conditions of Rule 16b-3 unless the Committee (or the Board, in the case of Options granted to Independent Directors) determines that the option or other award is not to comply with such exemptive conditions. The number of shares of Common Stock subject to any option, right or award shall always be rounded to the next whole number.

10.4 Approval of Plan by Stockholders. This Plan will be submitted for the approval of the Company's stockholders within twelve months after the date of the Board's initial adoption of this Plan. Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments may be granted and Restricted Stock or Deferred Stock may be awarded prior to such stockholder approval, provided that such Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments shall not be exercisable and such Restricted Stock or Deferred Stock shall not vest prior to the time when this Plan is approved by the stockholders, and provided further that if such approval has not been obtained at the end of said twelve-month period, all Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments previously granted and all Restricted Stock or Deferred Stock previously awarded under this Plan shall thereupon be canceled and become null and void.

10.5 Tax Withholding. The Company shall be entitled to require payment in cash or deduction from other compensation payable to each Optionee, Grantee or Restricted Stockholder of any sums required by federal, state or local tax law to be withheld with respect to the issuance, vesting or exercise of any Option, Restricted Stock, Deferred Stock, Performance Award, Stock Appreciation Right, Dividend Equivalent or Stock Payment. The Committee (or the Board, in the case of Options granted to Independent Directors) may in its discretion and in satisfaction of the foregoing requirement allow such Optionee, Grantee or Restricted Stockholder to elect to have the Company withhold shares of Common Stock otherwise issuable under such Option or other award (or allow the return of shares of Common Stock) having a Fair Market Value equal to the sums required to be withheld.

10.6 Loans. The Committee may, in its discretion, extend one or more loans to key Employees in connection with the exercise or receipt of an Option, Performance Award, Stock Appreciation Right, Dividend Equivalent or Stock Payment granted under this Plan, or the issuance of Restricted Stock or Deferred Stock awarded under this Plan. The terms and conditions of any such loan shall be set by the Committee.

10.7 Forfeiture Provisions. Pursuant to its general authority to determine the terms and conditions applicable to awards under the Plan, the Committee (or the Board, in the case of Options granted to Independent Directors) shall have the right (to the extent consistent with the applicable exemptive conditions of Rule 16b-3) to provide, in the terms of Options or other awards made under the Plan, or to require the recipient to agree by separate written instrument, that (i) any proceeds, gains or other economic benefit actually or constructively received by the recipient upon any receipt or exercise of the award, or upon the receipt or resale of any Common Stock underlying such award, must be paid to the Company, and (ii) the award shall terminate and any unexercised portion of such award (whether or not vested) shall be forfeited, if (a) a Termination of Employment, Termination of Consultancy or Termination of Directorship occurs prior to a specified date, or within a specified time period following receipt or exercise of the award, or (b) the recipient at any time, or during a specified time period, engages in any activity in competition with the Company, or which is inimical, contrary or harmful to the interests of the Company, as further defined by the Committee (or the Board, as applicable).

10.8 Limitations Applicable to Section 16 Persons and Performance-Based Compensation. Notwithstanding any other provision of this Plan, this Plan, and any Option, Performance Award, Stock Appreciation Right, Dividend Equivalent or Stock Payment granted, or Restricted Stock or Deferred Stock awarded, to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan, Options, Performance Awards, Stock Appreciation Rights, Dividend Equivalents, Stock Payments, Restricted Stock and Deferred Stock granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule. Furthermore, notwithstanding any other provision of this Plan, any Option or Stock Appreciation Right intended to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code shall be subject to any additional limitations set forth in Section 162(m) of the Code (including any amendment to Section 162(m) of the Code) or any regulations or rulings issued thereunder that are requirements for qualification as performance-based compensation as described in Section 162(m)(4)(C) of the Code, and this Plan shall be deemed amended to the extent necessary to conform to such requirements.

10.9 Effect of Plan Upon Options and Compensation Plans. The adoption of this Plan shall not affect any other compensation or incentive plans in effect for the Company or any Subsidiary. Nothing in this Plan shall be construed to limit the right of the Company (i) to establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Subsidiary or (ii) to grant or assume options or other rights otherwise than under this Plan in connection with any proper corporate purpose including but not by way of limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

10.10 Compliance with Laws. This Plan, the granting and vesting of Options, Restricted Stock awards, Deferred Stock awards, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments under this Plan and the issuance and delivery of shares of Common Stock and the payment of money under this Plan or under Options, Performance Awards, Stock Appreciation Rights,

Dividend Equivalents or Stock Payments granted or Restricted Stock or Deferred Stock awarded hereunder are subject to compliance with all applicable federal and state laws, rules and regulations (including but not limited to state and federal securities law and federal margin requirements) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under this Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all applicable legal requirements. To the extent permitted by applicable law, the Plan, Options, Restricted Stock awards, Deferred Stock awards, Performance Awards, Stock Appreciation Rights, Dividend Equivalents or Stock Payments granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

10.11 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Plan.

10.12 Governing Law. This Plan and any agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of California without regard to conflicts of laws thereof.

TERMINAL DEVELOPMENT, PRODUCTION AND PURCHASE AGREEMENT

BY AND BETWEEN

ASTROLINK INTERNATIONAL LLC

AND

VIASAT, INC.

EFFECTIVE AS OF OCTOBER 20, 2000

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*** Certain confidential information has been omitted and filed with the Securities and Exchange Commission pursuant to a Request for Confidential Treatment.

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TERMINAL DEVELOPMENT, PRODUCTION AND PURCHASE AGREEMENT

BY AND BETWEEN

ASTROLINK INTERNATIONAL LLC

AND

VIASAT, INC.

This Terminal Development Production and Purchase Agreement (including those Schedules and Attachments attached hereto, the "Agreement"), effective as of the Effective Date, is entered into by and between Astrolink International LLC, a Delaware corporation with offices located at 6701 Democracy Boulevard, Suite 1000, Bethesda, MD 20817 ("AIL"), and ViaSat, Inc., a Delaware corporation with offices located at 6155 El Camino Real, Carlsbad, California 92009 ("Contractor"). As used in this Agreement, "Party" means either AIL or Contractor, as appropriate, and "Parties" means AIL and Contractor. The Parties agree that the following terms and conditions shall apply to the products and services to be provided by Contractor under this Agreement in consideration of certain payments to be made by AIL.

The Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. BACKGROUND AND OBJECTIVES

1.1 BACKGROUND.

This Agreement is being made and entered into with reference to the following:

- (a) AIL has determined to implement a Ka-band, switched-processor payload, digital, multichannel, satellite switched networking system that includes various classes of ground Terminals (as defined below) satisfying the Acceptance Criteria (as defined below), and other terms and conditions of this Agreement to provide satellite telecommunications network services in various markets.
- (b) Contractor is an established and well-known global electrical engineering, manufacturing and systems integration company (together with its Subcontractors), has particular expertise in telecommunications and terminal technology and desires to develop, produce and provide AIL with the Terminals for the AIL System (as defined below) and related services as specified in this Agreement.

1.2 OBJECTIVES.

AIL and Contractor have agreed upon certain goals and objectives for this Agreement, including the following:

- (a) Designing, developing, manufacturing and distributing the * * * Terminals in accordance with the terms hereof;

- (b) Bringing the Terminals, which incorporate and meet the requirements of the SOW and the Acceptance Criteria, quickly and reliably to market;
- (c) Establishing AIL and its Service Providers (as defined below) as recognized providers of services utilizing the AIL System and the Terminals;
- (d) Ensuring that Contractor and Contractor's Subcontractors have in place all the research, development, manufacturing, technological and management skills necessary to design, develop, fabricate, assemble, install, integrate, support and maintain the Terminals;
- (e) Creating a contractual relationship that is flexible and highly responsive to the needs of the Parties and provides a competitive solution in light of changes in the business environment, and advances in technology and methods of using technology;
- (f) Aligning the capabilities and performance of the Terminals with the AIL System specifications, AIL's business requirements and Contractor's (including its Subcontractors') capabilities; and
- (g) Establishing Contractor as a supplier of Terminals for use with the AIL System.

1.3 CONSTRUCTION AND INTERPRETATION.

- (a) The provisions of Sections 1.1 and 1.2 are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties' obligations under this Agreement or to alter the plain meaning of the terms and conditions of this Agreement and shall be used only as guidance to the Parties.
- (b) Terms other than those defined in this Agreement shall be given their plain English meaning, and those terms, acronyms and phrases known in the satellite telecommunications technology products and services industries shall be interpreted in accordance with their generally known meanings.
- (c) Unless the context otherwise requires, words importing the singular include the plural and vice-versa.
- (d) References to an "Article," "Section" and "Subsection" shall be references to an article, Section, or subsection of this Agreement, unless otherwise specifically stated.
- (e) References to this Agreement and the words "herein," "hereof," "hereto," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection.
- (f) The Article, Section and Subsection headings in this Agreement are intended to be for reference purposes only and shall in no way be construed to modify or restrict any of the terms or provisions of this Agreement.
- (g) The word "including" and words of similar import (such as "include" and "includes") mean "including, but not limited to."
- (h) A reference to "days" means calendar days, unless otherwise specifically stated in a reference.

2. DEFINITIONS

2.1 CERTAIN DEFINITIONS.

As used in this Agreement, the following defined terms shall have the meanings set forth below. Other capitalized terms used in this Agreement are defined in the context in which they are used and shall have the meanings there indicated.

- (a) "Acceptance" or "Accepted" means, with respect to any Milestone or Terminal, written notification (except where AIL approval is not required by Section 6.2) from the AIL Contract Manager to the Contractor Contract Manager stating that such Milestone or Terminal has satisfied the applicable requirements set forth in Section 6.2.
- (b) "Acceptance Criteria" means the criteria used to confirm that the Terminals, Documentation and Services meet the requirements of the Acceptance Test Plan or the SOW as appropriate.
- (c) "Acceptance Testing" means the acceptance tests to be conducted in accordance with the procedures and timeframes set forth in the mutually agreed upon Acceptance Test Plan.
- (d) "Affiliate" means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. "Affiliate" does not include any Competitor.
- (e) "AIL Background Information" means all Confidential Information and Joint Confidential Information of AIL or its licensors, in any form, furnished or made available directly or indirectly to Contractor by AIL or otherwise obtained by Contractor from AIL, including, without limitation, the SOW and AIL's market analysis, certification procedures, business model and AIL-proprietary algorithms and all Intellectual Property Rights related to any of the foregoing, developed prior to the Effective Date.
- (f) "AIL Foreground Information" means all Confidential Information of AIL or its licensors, and any Joint Confidential Information, in any form, furnished or made available directly or indirectly to Contractor by AIL or otherwise obtained by Contractor from AIL and Confidential Information jointly owned by AIL and Contractor and all Intellectual Property Rights related to any of the foregoing, developed or acquired by AIL on or after the Effective Date.
- (g) "AIL System" means the Ka-band satellites to be constructed, launched and successfully deployed in orbit together with the ground segment required to deliver broadband services, and as further described in the Statement of Work.
- (h) * * *.
- (i) * * *.
- (j) * * *.
- (k) "Comparable Terminal" means any ground-based terminal, both outdoor units and indoor units, developed and/or manufactured by Contractor or another AIL-authorized manufacturer for use with the AIL System that are substantially similar to or derivatives of the Terminals, and the associated equipment, software and documentation therefor.

- (l) "Competitor" means a provider of a substantially comparable geosynchronous Ka-band, switched processor satellite system that provides services substantially comparable to those offered over the AIL System.
- (m) "Contract Year" means any calendar year during the Term hereof.
- (n) "Contractor Background Information" means all Confidential Information and Joint Confidential Information of Contractor or its licensors (excluding AIL's Confidential Information), in any form, furnished or made available directly or indirectly to AIL by Contractor or incorporated in or otherwise necessary to use or maintain the Terminals and Comparable Terminals, including the related Intellectual Property Rights.
- (o) "Contractor Foreground Information" means the Confidential Information (and the Intellectual Property Rights appurtenant thereto) developed by Contractor hereunder and any Joint Confidential Information acquired by Contractor after the Effective Date, which shall not include any AIL Confidential Information or any Contractor Background Information.
- (p) "Contractor Personnel" means employees of Contractor, including (1) any temporary-duty personnel and Key Contractor Personnel, and (2) Contractor's Subcontractors performing under this Agreement.
- (q) "Control" and its derivatives means (i) with regard to any entity the legal or beneficial ownership, directly or indirectly, of such entity ordinarily having voting rights or (ii) with regard to any entity, the management control over such entity.
- (r) "Dead on Arrival" means where any Terminal or component thereof is inoperative or fails to operate in accordance with the SOW at the time it is initially installed or fails to so operate during the * * * day period immediately following such initial installation.
- (s) "Defect" means any failure of a Terminal, including any components thereof, to operate in conformance with the SOW and applicable Standards.
- (t) "Documentation" shall include User Documentation, specifications, manuals, programmatic and test plans and procedures, reports, minutes and other media and documents pertaining to the performance, installation, training, use, operation and maintenance of each class of Terminal, all of the above as set forth in the Statement of Work.
- (u) "Effective Date" means the date that this Agreement, as executed by the Parties, is approved the Board of Directors of AIL. AIL shall use all reasonable efforts to obtain such approval as soon as practicable after execution of this Agreement by the Parties, and AIL shall provide prompt written notice to Contractor of such approval.
- (v) "Equipment" means the ground-based hardware, cabling, spare or replacement parts for Terminals and other non-Software components associated with the Terminals that may be purchased by AIL from Contractor under this Agreement.
- (w) "Firmware" means the computer programs that are stored in machine executable form within non-volatile memory and operate embedded processes within the equipment.
- (x) "IDU" means the indoor component of Terminal, as described in the SOW.

- (y) "Intellectual Property Rights" means any and all rights in and with respect to patents, copyrights, Confidential Information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, and other similar rights or interests in intellectual or industrial property and all registrations and applications for registration therefor.
- (z) "Joint Confidential Information" means information that has been independently developed, licensed or otherwise acquired by each Party without breach of this Agreement, and excluding Confidential Information of a Party that is provided to the other Party or its agents or Subcontractors hereunder, that would qualify as Confidential Information of each Party, but for the exclusions to Confidential Information set forth in Subsections 16.3(c)(3), (4) or (5) below.
- (aa) "Lien" means any lien (including subcontractor and other mechanic liens), imperfection in title, security interest, claim, charge, restriction or other encumbrance.
- (bb) * * *.
- (cc) "Losses" means all costs, expenses, liabilities and damages reasonably incurred and payable under any settlement, litigation or final judgment, and all related reasonable costs and expenses, including legal fees and disbursements and costs of investigation, expert fees, fines, interest and penalties.
- (dd) "Mark" means any trademark, service mark, trade name, domain name, logo or other indicia of source or origin of a product or service.
- (ee) "Material Subcontract" and "Material Subcontractor" have the respective meanings given in Section 12.9(b).
- (ff) "Milestone Payment" means a payment made by AIL to Contractor in accordance with Section 15.2 below upon Acceptance by AIL of the corresponding Milestone.
- (gg) "Milestone and Payment Schedule" has the meaning given in Section 5.3 and is attached hereto as Schedule 2.
- (hh) "ODU" means the outdoor component of Terminal, as described in the SOW.
- (ii) "Order" means a purchase order issued to Contractor for the purchase of Terminals.
- (jj) "Prime Rate" means the rate identified as the prime rate offered by The Chase Manhattan Bank (or its successor), as published in the Wall Street Journal from time to time.
- (kk) "Principal Subcontractor" means each of * * * and * * *.
- (ll) "Seed Order" means the first group of production Terminals ordered by AIL from Contractor hereunder, as described in Section 8.3 below.
- (mm) "Service Provider" means persons or entities that pursuant to written agreement with AIL resell the Terminals and Comparable Terminals, and/or services provided by the AIL System, Terminals and other related software and equipment to Users thereof.

- (nn) "Services" means (i) the services provided by Contractor pursuant to this Agreement, and (ii) services described in any Order, and (iii) any services not specifically described in (i) or (ii) that are required or appropriate for the proper performance and provision of those services described in (i) or (ii).
- (oo) "Software" means the machine readable computer code used to instruct a processor to perform a task or series of tasks in object code form, including Firmware, files, databases, interfaces, documentation and other materials related thereto) necessary to make the Terminals achieve applicable requirements of the SOW, which computer code shall be supplied and licensed by Contractor to AIL for use pursuant to this Agreement (including any third party Software sublicensed by Contractor hereunder), as such Software is revised, updated, corrected and enhanced from time-to-time and provided to AIL pursuant to this Agreement.
- (pp) "Source Code" means the human readable code written in a high level language, including source code listings as then commented, system and program flowcharts, and such other components, programs and documents to fully utilize, modify and maintain the Software consistent with standards set forth herein, including all necessary support routines, all of which, where applicable, shall be on media able to be read and processed.
- (qq) "Specifications" means those functional, performance and other requirements and documents set forth or referenced (as applicable) in the Statement of Work, as may be amended from time to time.
- (rr) "Standards" shall include:
- (i) all applicable federal, state, local and foreign laws, regulations, ordinances and codes, including export and foreign controls, the Foreign Corrupt Practices Act, the U.S. Export Administration Act, EPA, OSHA, ETSI, ITU, and foreign import and export laws and regulations, as well as any applicable requirements of the FCC, including the FCC Blanket Licensing Rules (as to * * * Terminals only), and all applicable telecommunications and safety regulations (including RF human exposure emission requirements, harmful interference standards, labeling and suppression of radio frequencies and radiation to specified levels, and ITU Recommendations and Radio Regulations of governing bodies of the countries set forth in Schedule 1), all of which as may be amended from time to time. Outside the U.S., this further includes compliance with applicable ETSI standards and any other applicable domestic or regional regulations.
 - (ii) all applicable industry standards, domestic and foreign, including (A) Underwriters Laboratory, CE, EIA/TIA, ANSI, National Electrical Code and NEBS (1, 2 and 3), all as may be amended from time to time; and (B) other standards as may be set forth in the Statement of Work.
 - (iii) In addition, the * * * Terminals shall comply with the ERC Decisions for blanket licensing.
- (ss) "Statement of Work" or "SOW" means the documents attached hereto as Schedule 3, which shall include by this reference all documents, specifications and tables, including without limitation the Specifications, contained therein and referenced thereby, as may be amended from time to time by mutual agreement of the Parties.

- (tt) "Subcontractor" means the Principal Subcontractors and those other contractors consultants, suppliers and providers used by Contractor under this Agreement.
- (uu) "Technical Materials" means the technical, engineering and design information and specifications of any kind relating to the Terminals, whether written or non-written, including Source Code, Software, Software specifications, functional specifications, interface specifications, hardware and circuit diagrams, mask works, schematic diagrams, vellums, third party supplier information (including name, address, and parts numbers), and associated documentation.
- (vv) "Terminal" means any ground-based terminal, both the ODU and the IDU, designed, developed and/or manufactured in accordance with the SOW and applicable Standards, for use with the AIL System and the associated Equipment, Software and Documentation, and all as updated, revised or improved from time-to-time and provided by Contractor to AIL, its Service Providers and/or Users.
- (ww) * * * is any country identified as such in Schedule 1.
- (xx) * * * is any country identified as such in Schedule 1.
- (yy) * * * is any country not identified in Schedule 1 as a * * *.
- (zz) "Type Approval" is the process within a country through which it is determined that radio and technical equipment (including the Terminals) complies with certain essential technical requirements and relevant administrative provisions as defined by cognizant governmental and regulatory agencies and can therefore be sold on the market of that country. Type Approval does not include satellite-specific regulatory requirements such as landing rights or authorization to transmit.
- (aaa) "United States" or "U.S." means the United States of America.
- (bbb) "User" means a person or entity that purchases or utilizes a Terminal or Comparable Terminal for its own purposes and not for resale or distribution.
- (ccc) "User Documentation" means the Documentation provided with each Terminal and Comparable Terminal, such as manuals, guides and instructions relating to the use, operation and installation of the applicable Terminal or Comparable Terminal.
- (ddd) "Virus" means: (i) program code, programming instruction or set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) other code typically designated to be a virus (including worms, Trojan horses and similar items).
- (eee) "Warranty" means any of the representations, covenants and warranties set forth in this Agreement.
- (fff) "Wholesale Price" means the maximum price of a Terminal to AIL and its Service Providers during the applicable Contract Year, FOB Contractor's designated site, as set forth in Schedule 4 attached hereto.
- (ggg) "Year 2000 Compliant" means the ability of Terminals, when used in accordance with its associated documentation, to be capable of correctly and unambiguously processing,

recognizing, providing, recording and receiving date data within and between the twentieth and twenty-first centuries, including proper identification of the century and leap years, without resulting in or causing logical or mathematical inconsistencies, processing errors, loss of functionality or performance or other failures.

2.2 OTHER TERMS.

Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated. A cross-reference for such terms is set forth below:

DEFINED TERM -----	LOCATION -----
Acceptance Test Plan	Section 6.2(a)
AIL Contract Manager	Section 12.4(a)
Annual Forecast Number	Section 14.2(a)
Annual Minimum Capacity	Section 6.7(b)
Confidential Information	Section 16.3(a)
Contractor Contract Manager	Section 12.4(a)
Cost-Reduction Development	Section 5.7
Development License	Section 10.1(a)
* * *	Section 5.5
Development Phase Liability Date	Section 23.2(b)
Disabling Code	Section 18.10
Early Default	Section 5.5
Escrow Agreement	Section 6(a)
Escrowed Material	Section 10.6(a)
Evaluating Vendor	Section 12.3(a)
Excusable Delay	Section 21.4
Extended Warranty Period	Section 18.3
Final Statement	Section 23.2(c)
Force Majeure Event	Section 21.3(a)

General Performance Award	Section 13.7
Initial Payment	Section 15.1
Initial Term	Section 4
Key Contractor Personnel	Section 12.5(a)
Material Subcontract	Section 12.9(b)
Material Subcontractor	Section 12.9(b)
Milestone	Section 5.3
Milestone Date	Section 5.3
Minimum Quantity Purchase Commitment (MQPC)	Section 8.4
Notice of Election	Section 20.4
NRE Payments	Section 15.2
On-Site Representative	Section 12.10
Pattern Defect	Section 18.3(c)(x)
Production Acceptance Test Plan	Section 6.2
* * *	Section 6.8
Proposing Vendor	Section 12.3(a)
Quality Assurance Program	Section 6.4
Reduced-Cost Module	Section 5.7
Release Conditions	Section 10.6(a)
Service Provider Terms	Section 8.2
Service Standard	Section 13.1
Term	Section 4
Terminal IP	Section 23.3(a)
Termination Date	Section 23.2(a)

Termination/Expiration Assistance Section 23.4

Warranty Period Section 18.3

3. SCOPE AND STRUCTURE

3.1 GENERAL SCOPE.

This Agreement (including the SOW and other schedules hereto) provides the terms and conditions under which Contractor will design, develop, document, test, manufacture, deliver and support the Terminals and market, sell, distribute, and deliver such Terminals to AIL and Service Providers, and under which AIL and Service Providers may receive Terminals and Services from Contractor for use with the AIL System including Services associated with the Warranty Period and Extended Warranty Period, from Contractor. For Services outside of the U.S., Contractor shall provide Services on a country-by-country basis as requested by AIL. AIL shall from time to time provide Contractor with its projected schedule of introduction of the AIL Service into the countries set forth in Schedule 1.

3.2 UNIQUE REQUIREMENTS.

The Parties acknowledge and agree that AIL has unique requirements and Contractor has solutions regarding the Terminals and Services to be provided by Contractor hereunder. In this regard, to the extent not already provided for in this Agreement, the Parties agree to negotiate in good faith in accordance with the procedures provided in Sections 12.1 and 12.2 hereof to provide the maximum flexibility in meeting AIL's particular Terminal and Service requirements, as proposed by AIL during the Term.

3.3 COORDINATION WITH AIL PROJECT TEAMS.

Contractor agrees, as a part of the work under this Agreement, to coordinate with all other members of AIL's Integrated Product Team or Teams (e.g., Space Segment, Ground Segment, and Systems Engineering and Integration), as the case may be, as described in Section 3.4.4 of the SOW to support the development and fielding of a fully functional AIL System. Contractor acknowledges that it bears the responsibility to design and construct completely integrated and functioning Terminals based on information as set forth in the SOW provided by AIL to Contractor under this Agreement. If Contractor becomes aware of any material information during the Term which differs from such information provided to Contractor under this Agreement, Contractor shall promptly notify AIL in writing.

3.4 CO-EXCLUSIVITY.

(a) For each of the * * * Terminal, AIL shall be entitled to provide no more than one additional vendor with a right and license to manufacture or have manufactured, such Terminal for use in connection with the AIL System. AIL may exercise the right to authorize such additional co-exclusive vendor at any time. Such restriction on AIL's right to procure and/or license such manufacturing rights from additional vendors with respect to the Terminals shall expire upon the later to occur of (1) the purchase from Contractor and the other co-exclusive vendor by and delivery to AIL, its Service

Providers and/or Users of 200,000 Terminals (including the Seed Order of * * * Terminals and * * * Terminals or Comparable Terminals) or (2) the * * * anniversary of the commencement of commercial service of the second AIL satellite.

- (b) In the event AIL terminates its contractual relationship with such other co-exclusive vendor for a particular class of Terminals or for all classes of Terminals during the Co-Exclusivity Period, AIL shall be permitted to license not more than one additional vendor to manufacture such class of Terminal or all classes of Terminals, as the case may be, during the remainder of the Co-Exclusivity Period.
- (c) In the event such replacement vendor receives design and/or manufacturing data prepared by the terminated vendor, (i) such replacement vendor will be required to pay AIL a commercially reasonable amount for the AIL Foreground Information and Confidential Information, foreground information and background information from the terminated vendor required to manufacture the Terminals, and/or (ii) AIL shall provide a commercially appropriate increase in the amount payable to Contractor so as to avoid putting Contractor at a material competitive disadvantage with respect to the replacement vendor.
- (d) The rights and obligations described in this Section 3.4 shall be known as the "Co-Exclusivity Right" and the term of Contractor's Co-Exclusivity Right shall be known as the "Co-Exclusivity Period". AIL may terminate Contractor's Co-Exclusivity Right upon the occurrence of certain events as provided herein. If AIL elects to terminate Contractor's Co-Exclusivity Right in accordance herewith, AIL may terminate the Co-Exclusivity Right as to any class or all classes of Terminals, in its sole discretion.

3.5 REPLACEMENT OF CO-EXCLUSIVE VENDOR.

If, prior to the expiration or termination of the Co-Exclusivity Period, AIL is released from its exclusivity obligation with the other co-exclusive vendor of a class of Terminal, Contractor shall have right of first offer to provide the estimated lost volume to meet the production needs of AIL, Service Providers and Users in accordance with the terms of this Agreement. AIL's obligation to award Contractor such estimated lost volume shall be contingent on Contractor demonstrating to AIL's reasonable satisfaction that Contractor has production capacity and capability sufficient for the timely production of such estimated lost volume and Contractor's satisfactory performance of its obligations hereunder. If Contractor does not exercise such right of first offer or demonstrate such production capacity and capability to AIL's reasonable satisfaction or has not satisfactorily performed its obligations hereunder, AIL may add a third * * * Terminal manufacturing licensee, as the case may be, to replace the terminated co-exclusive vendor.

3.6 NON-EXCLUSIVITY.

- (a) It is expressly understood and agreed that other than the purchase commitments made by AIL in Sections 8.3 and 8.4 hereunder, this Agreement does not require AIL to purchase or order any Terminal, including any components thereof, or Services from Contractor and, except as provided in Section 3.4 and Section 3.5 above, does not grant to Contractor an exclusive privilege to sell or otherwise provide to AIL, its Service Providers or Users any or all of the Terminals, including any components thereof or Services of the type described in this Agreement.

- (b) Notwithstanding the foregoing, AIL agrees not to enter into an agreement without Contractor's written consent with any vendor of CSP gateways that would preclude Contractor from developing and/or selling CSP gateways for use with the AIL System; provided, however, that Contractor responds to AIL's request for proposal or information for such CSP gateways and Contractor's response is determined by AIL to be satisfactory and competitive.
- (c) Contractor agrees that purchases by AIL under this Agreement shall not require AIL to continue any level of such purchases, except as expressly provided herein. AIL assumes no liability for Terminals or Services produced, processed, rendered or shipped in excess of the amounts specified in an Order submitted pursuant to this Agreement. Estimates or forecasts furnished by AIL or its Service Providers to Contractor shall not constitute commitments.

3.7 STRATEGIC RELATIONSHIP.

The Parties have agreed to the following:

- (a) **Additional Products and Services.** If AIL wishes to procure products or services from Contractor during the Term in addition to the Terminals and Services hereunder, Contractor shall in good faith consider the development and manufacture of new products and services, including without limitation, terminals for residential use, and give due consideration in the pricing thereof to existing and future volumes of business between AIL and Contractor.
- (b) **Roof Rights.** If requested by AIL, Contractor shall grant to AIL, where possible, roof and interior space and conduit rights for deployment of Terminals pursuant to industry standard roof right lease terms. In addition, Contractor shall assist AIL in obtaining such rights. Nothing in this Subsection shall obligate Contractor to violate any of its existing real property or roof right lease agreements.
- (c) **Executive Involvement.** For the first six (6) months after the Effective Date, principal senior executives of each Party and of each Principal Subcontractor (and thereafter senior management (levels and titles to be agreed)) shall meet monthly to discuss issues affecting work hereunder, including key issues affecting work under this Agreement, such as design, development, testing and production of Terminals, development and implementation of new technologies and products, proposed regulatory and/or industry changes, marketing efforts and such other issues as the Parties may desire. Quarterly after the Effective Date and during the Term, the Parties shall meet to discuss their plans and objectives with respect to enhancing the Terminals and the development of new Terminal-related and AIL System-related solutions. As part of such discussion (i) AIL shall share with Contractor its plans for potential future service offerings, potential market demand and anticipated product needs and (ii) Contractor shall share with AIL its plans regarding product enhancements and evaluations as well as new products under development. Contractor agrees that it will give due consideration to AIL's requirements in evolving the Terminals and other products and will give due consideration to reprioritizing scheduled product enhancements to be consistent with AIL's business needs.

4. TERM

The term of this Agreement shall begin upon the Effective Date and shall expire upon the * * * anniversary of in-orbit acceptance of the fourth satellite of the AIL System or * * *, whichever is sooner, (the "Initial Term"), unless earlier terminated or extended in accordance with this Agreement. Prior to the expiration of the Initial Term, the Parties may agree to extend the term of this Agreement, upon mutually agreeable terms, in * * * renewal periods. The Initial Term, as earlier terminated or extended, shall be known as the "Term".

5. TERMINAL DEVELOPMENT

5.1 AIL RESPONSIBILITIES.

In the SOW, AIL has provided Contractor with SOW describing the * * * Terminals, including interface specifications for the AIL System. AIL agrees to provide such other AIL Background Information and AIL Foreground Information to Contractor, as set forth in Section 10.1, as may be reasonably required for Contractor to perform its obligations hereunder.

5.2 CONTRACTOR RESPONSIBILITIES.

Contractor shall be responsible for the performance of the work described in the SOW, and shall perform such work in accordance with the SOW, for the design and development of Terminals, including services, responsibilities, equipment and other products and materials not specifically described in the SOW that are incidental to and reasonably required for the proper provision of such work, all in accordance with this Agreement. Based on the information contained in the SOW and elsewhere in this Agreement, Contractor shall produce detailed design documents for the Terminals, and such design documents shall fully describe the Terminals. Contractor also shall develop, publish and provide to AIL, and as applicable its Service Providers and Users, appropriate, accurate and complete Documentation as set forth in Section 10.5 herein. In addition, Contractor shall provide copies of all Documentation to AIL in electronic form.

5.3 MILESTONE AND PAYMENT SCHEDULE.

The Parties have agreed upon a detailed critical milestone schedule and payment plan (the "Milestone and Payment Schedule") based on the SOW. Contractor will meet all milestones set forth in the Milestone and Payment Schedule, including meeting the milestones (each, a "Milestone") within the corresponding dates set forth therein (each, a "Milestone Date").

5.4 FAILURE TO ACHIEVE MILESTONES.

If (i) Contractor fails to achieve, or (ii) AIL has a reasonable basis to believe Contractor will be unable to achieve, a Milestone by the corresponding Milestone Date, (1) Contractor will be required to develop a correction plan demonstrating Contractor can recover from Contractor's failure to achieve such Milestone and present said plan to AIL within ten (10) business days after AIL's request for such a correction plan; (2) the Parties will work in good faith to devise a plan of action to achieve the Milestone by the specified Milestone Date or arrive at a mutually acceptable revised schedule within ten (10) business days after AIL's receipt of Contractor's plan; and (3) Contractor's performance will be measured against the schedule in such plan of action. If the Parties fail to arrive at a mutually acceptable revised schedule within ten (10) business days after AIL's receipt of Contractor's correction plan or if Contractor fails to make adequate progress towards the agreed revised schedule, AIL may at its sole discretion

(x) terminate the Co-Exclusivity Right described in Section 3.4 above following notice to Contractor and a thirty (30) day cure period or (y) terminate this Agreement in accordance with Section 23.1(a) hereof.

5.5 * * *

Contractor acknowledges that time is of the essence with respect to the Milestone Dates and timely delivery and implementation of the Seed Order Terminals. If Contractor fails to meet the Milestone Date for Milestone Event 10 (* * *), except in the case of Excusable Delay, AIL will incur substantial damages which are and will be difficult to determine. Any such failure with respect to Milestone Event 10 is referred to herein as an "Early Default". Therefore, in addition to the termination rights reflected in Article 23.1(a), upon AIL's written demand, Contractor will * * *.

5.6 PERMITS.

Contractor shall identify, procure and maintain throughout the Term all applicable federal, state, county, local and foreign licenses, approvals, inspections, permits and certificates necessary to perform its obligations under this Agreement, including all export and import licenses and permits. AIL will provide Contractor with reasonable assistance in procuring and maintaining such permits. Notwithstanding the foregoing, AIL shall be responsible for procuring and maintaining those export licenses and other applicable licenses and permits required for the export of technical data and other information related to AIL's satellites and the provision of the services offered through the AIL System. Contractor will provide AIL reasonable assistance in procuring and maintaining such licenses.

5.7 COST-REDUCTION DEVELOPMENTS.

The Parties acknowledge and agree that the retail price of the Terminals is fundamental to market acceptance thereof and key to the Parties' mutual profitability hereunder. To that end, Contractor will identify, develop and produce specific Terminal cost reduction techniques, technologies and methods that may be used across * * * Terminals to reduce the wholesale cost of the Terminals (each such technique, technology or method, a "Cost-Reduction Development"). As set forth in Section 15.2 below, AIL will pay to Contractor NRE Payments upon Contractor's achievement of various Milestones, including delivery of the Cost-Reduction Developments identified in the Milestone and Payment Schedule. AIL shall have full visibility and approval rights over payments made in respect of Cost-Reduction Developments. The modules that shall be the subject of the Cost-Reduction Developments are the * * * and the * * * (each, a "Reduced-Cost Module").

5.8 SALE OF REDUCED-COST MODULES.

Contractor agrees to offer for sale to AIL Reduced-Cost Modules at a wholesale price per module that is commensurate with the then-current wholesale price to AIL of such Terminal. AIL may purchase such Reduced-Cost Modules * * *. AIL's ability to purchase Reduced-Cost Modules shall survive the termination or expiration of this Agreement for any reason, for so long as Contractor continues to manufacture the Reduced-Cost Modules. If Contractor elects to discontinue manufacturing any Reduced-Cost Module, Contractor agrees to license to AIL or AIL's designated manufacturer, all Intellectual Property Rights reasonably necessary or appropriate to manufacture such Reduced-Cost Modules. In addition, Contractor agrees to

provide any and all such Confidential Information of Contractor and its licensors as may be reasonably required or appropriate to manufacture such Reduced-Cost Modules.

6. ACCEPTANCE AND PRODUCTION

6.1 CONTRACTOR RESPONSIBILITIES.

Contractor shall be responsible for performing and shall perform the Production Work in accordance herewith. The "Production Work" is the Work described in the SOW and herein, as the case may be, for the manufacturing and delivery of Terminals, including production setup; production cycle; interface with Service Providers; obtaining Type Approval as set forth in Section 6.6; low rate and high rate production runs; software support; drawings and documentation; quality program (including product assurance program; parts, materials and processes management; and test and material discrepancy reviews), and logistics, training, manuals and operations support.

6.2 ACCEPTANCE TESTING.

- (a) Acceptance of Development Deliverables. Acceptance of deliverable items required by the SOW shall be in accordance with the following.
- (i) For brassboard, prototype and preproduction Terminals, Contractor shall provide an Acceptance Test Plan to AIL for approval at least sixty (60) days prior to scheduled commencement of testing. Contractor shall be obligated to conduct acceptance tests in accordance with the approved Acceptance Test Plan which demonstrate that the deliverable item meets the SOW and the Acceptance Criteria, and applicable Standards. Each such Acceptance Test Plan shall include the scope, schedule, test equipment, Acceptance Criteria, the parameters to be tested, and the definition of successfully achieving the test and failing the test, as well as other mutually agreed-upon parameters. Testing results must be based on objective criteria. The Acceptance Test Plan for each class of Terminal shall include the items specified in Section 3.3 of the SOW and shall demonstrate full compliance with the applicable provisions of the SOW.
 - (ii) For deliverable items which are not equipment or software, such as Documentation, and design reviews, AIL will base Acceptance upon content of the deliverable meeting the applicable requirements delineated in the SOW.
- (b) Acceptance of Production Terminals.
- (i) First Production Run Acceptance Testing. At least 90 days prior to scheduled completion of the First Production Run, Contractor shall provide a First Production Run Acceptance Test Plan to AIL for approval. Contractor shall be obligated to conduct acceptance tests which demonstrate that the first production run units meet the SOW and the Acceptance Criteria and applicable Standards. The Acceptance Test Plan shall include the scope, schedule, test equipment, Acceptance Criteria, the parameters to be tested, and the definition of successfully achieving the test and failing the test, as well as other mutually agreed-upon parameters. Testing results must be based on objective criteria. The Acceptance Test Plan for each class of Terminal shall demonstrate full compliance with the applicable provisions of the SOW.

- (ii) Production Acceptance Testing. At the Production Readiness Review, Contractor shall present, for AIL approval, the proposed Acceptance Tests Plan for Production Terminals (the "Production Acceptance Test Plan"). Contractor shall be obligated to conduct acceptance tests which demonstrate that each production unit meets the SOW and the Acceptance Criteria and applicable Standards. The Production Acceptance Test Plan shall include the scope, schedule, test equipment, Acceptance Criteria, the parameters to be tested, and the definition of successfully achieving the test and failing the test, as well as other mutually agreed-upon parameters. Testing results must be based on objective criteria. The Production Acceptance Test Plan for each class of Terminal shall demonstrate compliance with the applicable provisions of the SOW.

6.3 ACCEPTANCE TESTING FAILURES, CURE PERIODS AND REMEDIES.

- (a) For Development Deliverables. Problems and Acceptance Test Failures of Development Items are to be resolved in accordance with the SOW, Section 3.5.
- (b) For Production Terminals. Terminals that fail testing in accordance with the Production Acceptance Test Plan will be rejected by AIL. Contractor shall not ship such Terminals and Contractor will not be entitled to receive payment for such Terminals until Contractor corrects all items which failed and successfully completes a repeat Production Acceptance Test.
- (c) AIL System Deficiencies. In the event that Acceptance Testing demonstrates that the AIL System does not provide the functionality and performance required by AIL in the SOW, notwithstanding that such deficiency is not the result of a defect in the Terminals, the applicable provisions of the SOW or the Terminal design documentation, Contractor shall cooperate with AIL to implement, on an accelerated basis, adjustments and modifications to the design and production of the Terminals to achieve the required functionality and performance. Such actions may include retrofits, accelerated second-generation design and production and such other means as may be required to produce the required functionality and performance in the most expeditious and cost-effective manner. The Parties will agree to a reasonable basis for compensating Contractor for performance of such activities.

6.4 QUALITY ASSURANCE.

Prior to the start of production of Terminals, the Parties shall develop and agree upon a written quality assurance program and procedures (the "Quality Assurance Program"), and Contractor shall implement such Quality Assurance Program to produce Terminals, such that the Terminals perform and associated Services are consistently performed in accordance with the terms of this Agreement and at a level consistent with generally accepted best industry standards and practices. Contractor shall maintain compliance with the ISO 9001 series approach to quality in the performance of its obligations under this Agreement. If Contractor fails to implement or follow the Quality Assurance Program, Contractor agrees that AIL may require Contractor to cease production of Terminals or Comparable Terminals until Contractor meets the requirements of the Quality Assurance Program. If AIL reasonably believes that the quality of the Terminals has diminished or that the Terminals do not comply with the applicable provisions of the SOW or applicable Standards, AIL will provide written notification to Contractor reasonably describing the problem and Contractor will investigate the problem and report its findings and

conclusions to AIL in writing. If the Parties determine that a problem exists, Contractor agrees to develop and implement a corrective action plan to resolve the problem. If the Terminals do not comply with the applicable Standards solely due to constraints of the AIL System, the Parties will work together to determine if the Terminals can be modified to meet the applicable Standards, in accordance with Section 12.3(b) below. If the Terminals cannot be modified to comply with the applicable Standards, or if the Parties elect not to modify the Terminals to meet such Standards, Contractor shall not be responsible for meeting the Standards to the extent that the AIL System causes the non-compliance.

6.5 CERTIFICATION.

Upon Contractor's satisfactory completion of the First Production Run Acceptance Tests, including a written statement provided by Contractor to AIL certifying the compliance of the Terminals with the SOW, AIL shall certify Contractor as an AIL-certified supplier of Terminals. In addition, AIL must certify that all Software, Software Updates and other Terminal upgrades and updates produced by Contractor or any Subcontractor for use in or with the Terminals or Comparable Terminals meets the SOW without adverse effect to the Terminals or the AIL System. At least 30 days prior to introduction of enhancements, including hardware, software, or changes to recommended operating and installation practices, Contractor shall provide AIL a request for an updated certification detailing the requested change and defining any testing required to ensure compatibility. If the Contractor asserts that no testing is required due to the nature of the change, AIL may request testing if it has a reasonable doubt as to the assertion, and Contractor will perform testing as required to reasonably satisfy AIL's concerns. If the Contractor has defined test requirements, the change request will include a test report on tests which Contractor has conducted to ensure that the Terminal product will interwork with the existing installed base of Terminals, will not harm AIL's system, and will not contain defects which adversely affect performance for users. At AIL's request, Contractor shall provide AIL such proposed software or a limited quantity of sample hardware for AIL's own use in testing.

6.6 TYPE APPROVAL.

Contractor shall be responsible for, and responsible for all costs and expenses related to, obtaining Type Approval for each * * * Terminal in each * * * Country, and for * * * Countries as mutually agreed by the Parties. The priority of countries in which Type Approval is to be obtained shall be determined by AIL after consultation with Contractor, to ensure that Terminals will be available in a manner consistent with AIL's plans for the introduction into such countries of the AIL Service. For each * * * Country, Contractor shall obtain Type Approval prior to the scheduled launch of the applicable satellite (with timing subject to applicable Standards and subject to AIL System constraints that cannot be ameliorated by modifications in the Terminals to meet the applicable Standards), with priority of the countries as mutually agreed by the Parties. For each * * * Country, Contractor shall obtain Type Approval no later than * * * following the * * * (subject to AIL System constraints that cannot be ameliorated by modifications in the Terminals to meet the applicable Standards), with priority of the countries as mutually agreed by the Parties. For each * * * Country, Contractor shall obtain Type Approval * * * or more following the * * *, with priority of the countries as determined by AIL after review of the Parties' analyses of economic, market and other factors for selected countries. AIL shall report to Contractor the status of obtaining landing rights and regulatory approvals, and Contractor shall report to AIL the progress of obtaining Type Approvals, all on a monthly basis commencing in * * * or such other date as may be mutually agreed by the Parties. The costs and expenses associated with obtaining Type Approval in a given country will be considered in the decision to offer service for * * * Countries.

6.7 PRODUCTION COMMITMENTS; MANUFACTURING CAPACITY.

- (a) Contractor agrees to manufacture and deliver the Terminals, following Acceptance, in accordance with this Agreement.
- (b) Contractor's initial minimum terminal capability and capacity for Terminal production (including for the Seed Order) shall be the greater of (i) * * * Terminals for the Contract Year * * * (ii) or one-half of the Annual Forecast Number of Terminals as provided to Contractor in accordance with Section 14.2 below (the "Annual Minimum Capacity"). For each Contract Year, Contractor shall establish and maintain the capability and capacity (including production facilities and Contractor Personnel) required to manufacture and ship, in each Contract Year, at least the Annual Minimum Capacity.
- (c) The Parties agree to renegotiate Contractor's manufacturing capacity commitment for the following year if AIL and its Service Providers and Users, collectively, do not purchase from all vendors of Terminals and Comparable Terminals at least * * * of the number of Terminals and Comparable Terminals set forth in Schedule 6 for the applicable Contract Year. In such event, Contractor's required capacity commitment for the following year will not exceed the lesser of (i) the amount set forth on Schedule 6 for such year or (ii) * * * the amount actually purchased in the current year.
- (d) If AIL, Service Providers and Users purchase in any Contract Year more than the number of Terminals set forth in Schedule 6 for that Contract Year, Contractor agrees to increase its Annual Minimum Capacity to a mutually agreed level to maintain capacity and capability commensurate with the actual number of Terminals purchased and the number of Terminals forecasted by AIL, Service Providers and Users, in the aggregate, to be purchased in the next Contract Year.

6.8 * * *

If AIL, Service Providers and Users order Terminals scheduled for delivery in a given Contract Year (by mutual agreement of Contractor and the ordering party) up to the Annual Forecast Number of Terminals and Comparable Terminals as provided to Contractor in accordance with Section 14.2 below for such Contract Year, and Contractor fails to manufacture and deliver the ordered number of Terminals or Comparable Terminals as scheduled because of Contractor's failure to maintain the Annual Minimum Capacity for that Contract Year (unless such failure is the result of an Excusable Delay), Contractor shall, upon AIL's request, * * *, if Contractor fails to deliver Terminals to AIL, Service Providers or Users in accordance with the Annual Minimum Capacity requirement for a period of * * * during the Co-Exclusivity Period, AIL may terminate the Co-Exclusivity Right upon written notice to Contractor thirty days after Contractor's receipt of a cure notice. After the Co-Exclusivity Period * * *, if Contractor commits a material breach of Section 6.7, AIL may terminate this Agreement in accordance with Section 23.1(a) and cancel its outstanding Orders in accordance with Section 8.8. If AIL so terminates this Agreement for Contractor's material breach of Section 6.7, (i) AIL shall be entitled to have the work completed by another party or parties, and (ii) Contractor shall not be liable to AIL for damages pursuant to Section 23.3(b) below or otherwise, provided that Contractor reasonably fulfills its obligations under Sections 23.3(a) and 23.4 and reasonably performs its other post-termination obligations hereunder. Notwithstanding the foregoing, AIL may not terminate this Agreement for Cause as provided above if AIL, at the time of termination, has two or more active vendors of Terminals (excluding Contractor). The foregoing remedies shall be AIL's sole remedies for breach of Section 6.7 above.

6.9 OPTIMAL IN-COUNTRY MANUFACTURE AND ASSEMBLY.

Contractor shall use its reasonable commercial efforts to minimize customs, duties, transportation costs and potential barriers to trade so that Terminals are available in the markets set forth on Schedule 1 at competitive prices. Periodically, Contractor will report to AIL on its progress to achieve the goal of optimal in-country manufacture and assembly. When production volumes justify foreign manufacture of the Terminals, to minimize customs duties, transportation costs and potential barriers to trade, production will be localized to the extent commercially reasonable taking into account applicable markets including, but not limited to, within the European Union, the NAFTA, and Mercosur to serve those markets. If local production will be supplemented with imported components, Contractor will use commercially reasonable efforts to determine that the finished product complies with the applicable rules of origin, so that preferential treatment will be afforded to products originating within each of the applicable trading blocks (e.g., equipment manufactured in the United States complies with the NAFTA's rules of origin, so that it will be entitled to preferential NAFTA treatment when imported into Mexico). Contractor will use commercially reasonable efforts to identify the production locations from which Contractor will serve the major Asian markets (such as Japan, Taiwan, South Korea, and Australia) and the Middle East, and if use of such production locations is commercially reasonable, Contractor shall begin to produce Terminals in such locations, as Contractor deems appropriate. With regard to Israel, Contractor will use commercially reasonable efforts to confirm that it will be able to serve that market from a country with which Israel has a free trade agreement.

6.10 SPARE PARTS.

Contractor will maintain or have maintained an inventory of spare parts for the Terminals for the life of the AIL System or the Term whichever is sooner, adequate to maintain all such Terminals sold and, following expiration of warranty, will sell such parts to AIL, its Service Providers, Users and third party maintenance providers on commercially reasonable terms and at prices comparable to those at which Contractor sells similar parts to other purchasers on similar terms for similar quantities.

7. MARKETING AND BRANDING

7.1 MARKETING PROGRAMS.

Contractor agrees to provide, at its sole expense, marketing, sales and distribution support as set forth in Schedule 7 attached hereto. In addition, Contractor and its Subcontractors shall mutually agree with AIL on additional marketing and advertising support of AIL's system, including the Terminals, including, without limitation, lead generation and management. Contractor and its Subcontractors shall undertake reasonable efforts to (1) introduce AIL to potential AIL customers from their existing and future customer set, (2) market AIL's services to potential AIL customers from their existing and future customer set, and (3) maintain and provide AIL with periodic information on market needs for the Terminals and related services.

7.2 AIL MARKS.

The Marks under which the AIL System and the AIL service are offered shall be in AIL's sole and absolute discretion, provided such Marks do not conflict with any of Contractor's Marks. Contractor shall affix to each Terminal (on both the indoor and outdoor components of the Terminal) the AIL Mark, as designated by AIL, in a form and location to be mutually agreed

upon. AIL shall designate a space on the Terminals in which its Mark is to be affixed. The Parties agree to enter into appropriate royalty-free, Mark licensing agreements in furtherance of the foregoing.

7.3 CONTRACTOR MARKS.

Unless otherwise mutually agreed, the Terminals shall be "co-branded" with the respective Marks of AIL, Contractor, and its Subcontractors subject to reasonable written approval of each Party as to how its brand is used. "Co-branding" means the Terminals will be marketed, promoted, advertised and sold with such Marks in ways that maintain the identity of the Marks of AIL, Contractor, and its Subcontractors, respectively. The Marks of Contractor, and its Subcontractors may be used by AIL on a royalty-free basis; provided, however, that the party owning the Mark shall have prior written approval for each form of use of its Mark(s) and the Marks may be used only in connection with the AIL System services and the Terminals.

8. ORDERING

8.1 ORDERS GENERALLY.

(a) During the Term of this Agreement and in accordance with Section 3.1, purchases of Terminals by AIL or its Service Providers shall be made by means of an Order in the English language issued to Contractor as provided in this Agreement or, as to Service Providers and Users, pursuant to separate agreement with Contractor. Orders may be issued by mail, fax or, upon mutual agreement of the Parties, electronic data interchange. All Orders issued by AIL hereunder shall reference this Agreement and will be deemed to incorporate and be governed by the terms and conditions of this Agreement as applicable to the purchase of Terminals. Any term or condition set forth in an Order or other document submitted by either Party that is inconsistent with or in addition to this Agreement will be of no force or effect, unless mutually and expressly agreed by the Parties in writing. Neither AIL nor any Service Provider will be liable to Contractor for any charges, additional or otherwise, for Terminals or Services provided by Contractor unless set forth in an Order, or otherwise mutually agreed upon by the contracting parties in writing. Each Order shall be deemed to be accepted by Contractor upon receipt of the Order, unless Contractor notifies AIL or the ordering party, if not AIL, of its objection to any Order within five (5) business days of Contractor's receipt of such Order.

(b) Each Order shall specify the following: ship to address, purchase order number, shipping instructions, part and model number, quantity, price, statement that the Order is being placed under this Agreement and requested delivery dates which must be within * * * days of acceptance of an Order, but in no event may a delivery date be requested beyond * * * from the end of the Term. Requested delivery dates are subject to Contractor's lead times (as provided in Section 8.7(a) below) and approval of credit. Contractor will use commercially reasonable efforts to meet agreed upon delivery dates within a permissible delivery window of * * * prior to the scheduled delivery date and * * * following the scheduled delivery date, unless otherwise agreed by the contracting parties. Delivery shall occur upon delivery to the carrier at Contractor's shipping point. Delivery schedule changes must be mutually agreed to in writing.

8.2 ORDERS FROM SERVICE PROVIDERS.

Within sixty (60) days from the Effective Date, the Parties will negotiate and agree to a form of contract that Contractor will offer to Service Providers ordering Terminals. Such form of contract will be attached hereto as Schedule 8 and will include certain agreements reached by the Parties herein, such as pricing, taxes, passage of title and risk of loss, warranties, Service Standards, indemnifications and other provisions that expressly apply to Service Providers herein (the "Service Provider Terms"). Notwithstanding the foregoing, Contractor and any Service Provider may enter into an agreement to purchase Terminals upon terms that differ from the Service Provider Terms. Acceptance by Contractor of any Service Provider Order shall depend on the Service Provider (1) ordering the Terminals a pre-agreed number of days in advance; (2) ordering certain pre-agreed volumes; and (3) meeting pre-agreed financial requirements (such as satisfactory assurance of payment or adequate vendor financing, or a combination of the foregoing or otherwise).

8.3 SEED ORDER.

AIL hereby purchases from Contractor * * *. The delivery of the Seed Order shall be in accordance with Schedule 18.

8.4 MINIMUM QUANTITY PURCHASE COMMITMENT (MQPC).

AIL hereby commits to Contractor that prior to * * *, as such date may be extended pursuant to the terms of this Agreement, that AIL, Service Providers and Users shall have purchased and taken delivery from Contractor and all other suppliers of Terminals and Comparable Terminals no less than * * * Terminals and Comparable Terminals (which amount includes the number of Terminals and Comparable Terminals purchased under the Seed Order) (the "Minimum Quantity Purchase Commitment" or "MQPC"). If the MQPC is not achieved by * * *, AIL shall pay Contractor the MQPC termination liability payment described in Section 8.5 below.

8.5 MQPC SHORTFALL LIABILITY.

- (a) If AIL, its Service Providers and Users do not purchase at least * * * Terminals or Comparable Terminals (including the Seed Order quantities) as specified in the MQPC, AIL agrees to pay Contractor a termination liability payment equal to * * * per Terminal or Comparable Terminal multiplied by one-half of the positive difference between * * * and the number of Terminals or Comparable Terminals actually sold by Contractor and all other suppliers of Terminals and Comparable Terminals (including the Seed Order quantities) as of * * *. In no event, however, shall AIL's maximum liability under this Section 8.5 exceed * * * in the aggregate. The remedy provided in this Subsection 8.5(a) shall be Contractor's sole remedy for AIL's breach of Sections 8.3 and 8.4.
- (b) If Contractor fails to sell Terminals and Comparable Terminals due to Contractor's inability to manufacture or distribute Terminals and/or Comparable Terminals or due to Contractor's failure to comply with Sections 6.7 and 14.3(c), the foregoing Subsection 8.5(a) shall not apply.

8.6 FORECASTS AND REPORTING.

Prior to the beginning of Contract Year * * * and for each Contract Year thereafter, AIL shall provide Contractor with the Annual Forecast Number (as defined in Section 14.2(a) below). In addition, AIL shall provide Contractor with an annual forecast of the number of Terminals and Comparable Terminals that AIL expects to order from Contractor in the subject Contract Year

(the "AIL Order Forecast"). AIL shall provide updates to the AIL Order Forecast to Contractor on a quarterly basis or as otherwise agreed by the Parties. Contractor shall provide AIL with a report of the number of Terminals and Comparable Terminals ordered and shipped for each calendar month during the Term, within fifteen (15) days of the end of such calendar month.

8.7 DELIVERY DATES.

- (a) Unless otherwise agreed by Contractor and the ordering party as set forth in an Order or other writing, Contractor shall deliver Terminals to AIL and Service Providers within * * * of Contractor's receipt of an Order from AIL or such Service Provider, to the extent practicable and subject to Excusable Delay and further subject to Contractor's receipt of reasonably accurate order forecasts from AIL and Service Providers. Agreed delivery dates shall be firm. Time is of the essence for the Seed Order deliveries and for any Orders scheduled for delivery four (4) months prior to the scheduled date of introduction of AIL System service in any country and for eight (8) months thereafter and for Orders placed from time to time that state in bold type (or other manner reasonably intended to call Contractor's attention to such statement) that late delivery will materially impact AIL's business or the business of its Service Providers. Early deliveries (except as provided in Section 8.1(b) above or authorized in writing by the ordering party) may be refused due to space or security considerations and returned or stored at Contractor's expense and risk of loss.
- (b) AIL shall be responsible for site availability for Terminals shipped to AIL and will advise Contractor within a reasonable time if there is going to be a delay involving site availability that would impact Contractor's delivery. In the case of Services ordered by AIL, Contractor shall provide AIL with reasonable prior written notice of its need to access any AIL site, and AIL shall be responsible for providing access to such site as reasonably necessary for Contractor to perform such Services including extending access beyond normal business hours, if required.
- (c) If Contractor discovers any potential delay that threatens the timely or full delivery of an Order as scheduled or the performance of Services, Contractor shall immediately notify AIL of such delay. If requested by AIL, Contractor shall provide a written plan for correction of such delay.
- (d) If an Order prohibits partial shipments of any scheduled delivery of Terminals and Contractor is unable to ship the full quantity of Terminals for such delivery date per the agreed-upon schedule, Contractor shall inform the ordering party of its ability (if any) to make a partial shipment of Terminals against the scheduled quantity. The ordering party may then elect, by providing written notice to Contractor, (i) to terminate the entire Order and return to Contractor for a full refund all unused Terminals already shipped under such Order, or (ii) to accept such partial shipment(s) per Contractor's revised delivery schedule.

8.8 CANCELLATION AND RESCHEDULING OF AIL ORDERS.

- (a) For Orders excluding the Seed Order, AIL can cancel an Order in whole or in part by providing written notice to Contractor, without reducing AIL's liability for the MQPC Shortfall Liability as set forth in Section 8.5 above, subject to the following restrictions and charges:

CANCELLATION NOTICE RECEIVED PRIOR TO

CHARGE AS A % OF

ORIGINAL SCHEDULED DELIVERY DATE -----	WHOLESALE PRICE -----
More than 90 days	***
60-89 days	***
30-59 days	***

- (b) AIL may change the "ship to" destination of any Order by submitting notice to Contractor in writing at least five (5) business days prior to shipment. If such change is requested by AIL with less than five (5) business days of notice prior to shipment, Contractor will use all reasonable efforts to implement such change. Contractor has the right at its cost and expense to adjust the previously scheduled delivery date by up to ten (10) days in the event AIL changes the "ship to" destination within the five (5) business days; provided, however, Contractor shall use all commercially reasonable efforts to limit such delay. Otherwise, the original delivery date shall remain in effect.
- (c) Subject to Section 8.3 and Section 8.7(a), AIL may reschedule any scheduled delivery contained in an Order at no cost, expense or liability at least ten (10) business days prior to the scheduled delivery date, up to two (2) times per scheduled delivery; provided, however that the rescheduled delivery date may not be more than ninety (90) days following the originally scheduled delivery date. If the new delivery date is within thirty (30) days of the scheduled delivery date, then Contractor shall arrange and pay for all additional storage costs and expenses for the Order. If the new delivery date is more than thirty (30) days after the scheduled delivery date, then such reasonable additional transportation and storage costs and expenses incurred by Contractor shall be payable by AIL. Payment for Terminals delivered pursuant to a rescheduled delivery date shall be paid in accordance with Article 15 as of the revised delivery date; provided, however that payment for scheduled delivery of Terminals shall be due no later than ninety (90) days following the originally scheduled delivery date.

8.9 TERMINATION OF ORDERS.

In the event that Contractor:

- (a) Fails to correct Terminal deficiencies or failures as set forth in 18.3(c)(x) hereof; or
- (b) Fails to make delivery in a timely fashion as set forth in Section 8.7;

then AIL may, by giving written notice to Contractor as provided in this Agreement terminate the corresponding Order, in whole or in part, for cause as of a date specified in the notice of termination. In such event, AIL may return any deficient Terminals and uninstalled non-deficient Terminals and associated Equipment, Software or Documentation to Contractor, in which case Contractor shall promptly refund to AIL all charges paid by AIL to Contractor for such items, and AIL shall have no further payment obligations to Contractor with respect to such items. Such returned Terminals shall count as "delivered" Terminals with respect to the Seed Order and MQPC.

8.10 TERMINAL FINANCING PROGRAM.

Contractor agrees to provide, or assist in arranging financing for, AIL, Service Providers and Users on competitive commercial terms at least as favorable as the terms customarily provided by Contractor to its other customers in the geographic regions in which AIL, the Service Providers or Users are located, as such terms may evolve during the term of the Agreement

based upon specific credit worthiness of AIL or such Service Provider or User and appropriate security provisions. Indicative terms for such financing program are as follows:

Direct Financing

- * * * year financing term
- Amounts of * * * to * * *
- Interest rate at * * * based on credit review of end-user customer
- Monthly or quarterly payments
- Facility to be secured by equipment, non-recourse to AIL for Service Provider and User financing
- Extension of credit subject to standard credit and financial review of end-user customer

9. DISTRIBUTION, SHIPPING AND INSTALLATION

9.1 DISTRIBUTION.

Contractor shall provide worldwide distribution of Terminals, initially to the countries listed on Schedule 1, which shall be expanded from time-to-time as agreed to by the Parties, provided Contractor will agree to expand distribution into countries where it has existing distribution capability, subject to commercial viability. AIL will obtain landing rights to provide its service in a * * * before Contractor is required to distribute Terminals in such country. AIL will obtain landing rights to provide its service in a * * * before Contractor is required to distribute Terminals in such country. Contractor agrees to use commercially reasonable efforts to establish its distribution network and begin distributing Terminals in a country in less than the applicable time period after landing rights are secured if required by AIL. Absent a written agreement of the Parties to the contrary, Contractor shall not be obligated to begin distribution of Terminals in any country prior to AIL obtaining landing rights in such country. A list of countries in which Contractor and the Principal Subcontractors have existing facilities or distribution capability is set forth in Schedule 9.

9.2 PACKING.

All deliveries to AIL pursuant to this Agreement shall be preserved, packaged and packed to ensure safe delivery to their destinations without damage. All Terminal packages shipped to AIL, Service Providers and Users shall contain the items required in Section 1.7 of the SOW, plus any optional items if ordered.

9.3 SHIPPING.

Unless otherwise specified in an Order accepted by Contractor, all shipments hereunder shall be FOB Contractor's designated site.

9.4 RISK OF LOSS.

Risk of loss to any Terminal, Equipment or Software shipped to AIL or Service Provider shall vest in AIL, or such Service Provider, as the case may be, upon acceptance of delivery of such Terminal by the authorized agent or carrier of the purchasing party if designated by such party in the corresponding Order and if not so designated, upon delivery to the carrier at Contractor's

shipping point, unless otherwise mutually agreed in writing by Contractor and the purchasing party. If Contractor obtains insurance on behalf of or for the benefit of AIL, AIL shall be responsible for filing, processing and pursuing all claims under such insurance policy.

9.5 TITLE.

Title, free and clear of all Liens, to any Terminal or Equipment shipped to AIL or Service Providers shall vest in such recipient upon acceptance of delivery of such Terminals by the authorized agent or carrier of the purchasing party as designated by such party in the corresponding Order, and if not so designated, upon delivery of the carrier at the Contractor's shipping point, unless otherwise mutually agreed in writing by Contractor and the purchasing party. Notwithstanding the foregoing, if title must be maintained by Contractor in order to perfect a purchase money security interest as described in Section 24.17 below, then title may not pass until the security interest has been released.

10. LICENSES, PROPRIETARY RIGHTS AND ESCROW

10.1 GRANTS OF LICENSES TO CONTRACTOR.

- (a) Development License to use AIL Confidential Information. AIL hereby grants Contractor a worldwide, royalty-free, limited, non-exclusive, non-transferable (except in accordance with Section 24.1 hereof) development license to use and reproduce the AIL Background Information and AIL Foreground Information (including AIL's System and Terminal background Intellectual Property related thereto) provided by AIL and required by Contractor or its Subcontractors for the sole purpose of designing and developing the Terminals (the "Development License"). The term of the Development License will be coterminous with the Term (as defined in Article 4 above).
- (b) Production License. During the Term, AIL grants to Contractor a worldwide, royalty-free, limited, non-exclusive, non-transferable (except in accordance with Section 24.1 hereof) production license to use the AIL Background Information and AIL Foreground Information to manufacture and support the Terminals and Comparable Terminals and to reproduce, market, sell (except in the case of the Software), license (in the case of Software) and distribute the AIL Background Information and AIL Foreground Information solely as contained in the Terminals and Comparable Terminals (the "Production License"). Following the Initial Term, the Parties mutually may agree to extend the Production License on commercially reasonable terms. In any case, the Production License shall be coterminous with the Term.
- (c) Term of Licenses. Notwithstanding anything to the contrary in Subsections 10.1(a) and 10.1(b), the term of the foregoing Development and Production Licenses shall continue in effect as long as and to the extent required by Contractor to fulfill its obligations hereunder, including those for support, maintenance and provision of parts.

10.2 GRANTS OF LICENSES TO AIL.

Subject to Section 10.3, Contractor hereby grants to AIL, its Service Providers and Users a worldwide, perpetual, fully-paid-up, royalty-free, limited, non-exclusive, non-transferable (subject to Section 24.1 hereof) right and license to use, operate, display, demonstrate, market, distribute, lease and sell, and authorize others to perform the foregoing, the Contractor

Background Information and Contractor Foreground Information as incorporated with and into the Terminals.

10.3 SOFTWARE LICENSES AND RIGHTS.

Commencing upon delivery of Software, Contractor grants to AIL, Service Providers and Users a perpetual, nontransferable (except as permitted pursuant to Subsection (g)), nonexclusive, fully-paid, royalty-free, irrevocable, and a world-wide right and license (or sublicense for third party software) to use, copy, access, display, operate and process the Software in connection with AIL's intended use of the Terminals and the intended use by the Service Providers and Users to which AIL supplies Terminals.

- (a) AIL and each Service Provider and User to which AIL supplies Terminals may make only one (1) copy per Terminal (or as otherwise required by applicable law) of the Software for back-up purposes and for operation of the Terminals. Any such reproduction shall include any copyright or similar proprietary notices contained in the Software being reproduced.
- (b) Neither AIL nor any Service Provider or User to which AIL supplies Terminals shall attempt to decompile or reverse assemble all or any portion of the Software in an effort to obtain the Source Code for the Software, nor shall it authorize others to do so, nor rent, lease, grant a security interest in, or otherwise transfer rights to the Software except as set forth herein.
- (c) Neither AIL nor any Service Provider or User to which AIL supplies Terminals shall, except as provided in Section 10.6, create a derivative work of the Software or modify the code to the Software; provided, however, the foregoing shall not in any manner whatsoever limit AIL's, its Service Providers and User's rights to use the Software in accordance with the Documentation or Contractor's instructions or otherwise limit AIL's rights to use any tools provided with the Software.
- (d) AIL shall require by written agreement with the Service Providers and Users to which AIL supplies Terminals that such Service Providers and Users agree to comply with the provisions of Subsections (a) through (c) above, subject to the requirements of applicable law.
- (e) In connection with AIL's maintenance and support of the Software following a release from escrow as provided in Section 10.6, AIL may add to, delete from, or modify and create derivative works of the Software as provided in Section 10.6; provided, however, that no changes, however extensive, shall alter Contractor's or its suppliers' title to the original Software. Title to any such additions or enhancements to the Software shall vest in Contractor or the supplier of the Software and AIL shall have the same license to such modifications as it had in the original Software, except in case where Contractor fails to provide support, in which case, title to the enhancements lies with AIL. Both Parties agree not to assert their respective Intellectual Property Rights in such enhancements against the other. Contractor shall not have any support or maintenance obligations with respect to such additions or enhancements made by AIL to the Software.
- (f) AIL shall have the right to permit its officers, employees, agents, advisors, third party consultants, Users and Service Providers to use the Software on behalf of AIL or its

Service Providers or Users, as the case may be, to the same extent AIL is permitted hereunder, subject to the restrictions hereof.

- (g) AIL shall have the right to transfer any of the licenses granted to AIL herein in the event AIL sells a Terminal or component thereof or in the event of an assignment or change in Control in accordance with Section 24.1.
- (h) During the Warranty Period and the Extended Warranty Period (if any), AIL, Service Providers and Users shall be entitled to receive from Contractor, at no additional charge, all Software error corrections, bug fixes, patches and mandatory updates (collectively, "Software Corrections"). Following the Warranty Period and any Extended Warranty Period, Contractor agrees to provide Software Corrections to AIL, Service Providers and Users for commercially reasonable fees. In addition, Contractor may make available to AIL, Service Providers and Users from time to time during the Warranty Period and Extended Warranty Period, if applicable, at prices determined by Contractor, certain updates, upgrades, enhancements and releases (collectively, "Software Updates"). Such Software Corrections and Software Updates shall be considered to be Software hereunder. Ownership of the Software Corrections and Software Updates as between AIL and Contractor shall be determined in accordance with Section 10.4 hereof. Software Corrections and Software Updates shall be tested as provided in Section 6.5 prior to release.

10.4 PROPRIETARY RIGHTS.

- (a) Assignment of Rights.
 - (i) Prior to permitting any Contractor Personnel to perform work hereunder, Contractor and its Subcontractors will enter into appropriate agreements with their respective employees, contractors and consultants that properly assign Intellectual Property Rights developed by such employees, contractors and consultants so that the provisions of this Agreement may be validly implemented without infringement.
 - (ii) Prior to permitting any employee, contractor or consultant to perform work hereunder, AIL will enter into appropriate agreements with such persons and entities that properly assign Intellectual Property Rights developed by such employees, contractors and consultants so that the provisions of this Agreement may be validly implemented without infringement.
- (b) Jointly-Developed Works of Authorship. Copyrights and other rights of authorship in any written materials or other works of authorship (including maskworks, schematics, diagrams and flowcharts) produced by a joint collaboration of AIL and Contractor, will be jointly owned except for a Party's Confidential Information contained therein (which shall remain the sole property of that Party or its licensors) without any appropriate right or obligation of accounting to the other Party for profits from exploitation of the rights.
- (c) Contractor Foreground Information. Subject to Subsection (a) above, any Contractor Foreground Information produced by Contractor and its Subcontractors under this Agreement, except for any AIL Confidential Information (which shall remain the sole property of AIL or its licensors) and Joint Confidential Information contained therein,

shall be the sole property of Contractor, the Subcontractors or their respective licensors. Contractor agrees that it will negotiate in good faith to license the Intellectual Property Rights contained in such Contractor Foreground Information to AIL's authorized second source(s) on commercially reasonable terms and fees acceptable to Contractor, to the extent such second source is in need of such Intellectual Property Rights related to the Contractor Foreground Information to fulfill its obligations to AIL related to the AIL System.

- (d) Patent Rights. Patent rights and rights in inventions first created or reduced to practice in the course of performance under this Agreement will be owned as follows:
- (i) Solely by Contractor if created solely by Contractor Personnel and to the extent they do not incorporate any AIL Confidential Information (Intellectual Property Rights related to such patent rights and rights of invention also shall constitute Contractor Foreground Information);
 - (ii) Solely by AIL if created solely by AIL personnel and to the extent they do not incorporate any Contractor Confidential Information; and
 - (iii) Jointly without any appropriate right or obligation of accounting to the other Party for profits from exploitation of the rights, if created jointly by Contractor Personnel and AIL personnel to the extent they do not incorporate Confidential Information of either Contractor or AIL. With respect to jointly owned patent rights and rights in inventions, the Parties will provide reasonable cooperation and assistance to one another in the preparation, filing and prosecution of any patent applications, and the execution of all associated applications, assignments and other instruments. The Parties will divide any costs and expenses incurred by the Parties in preparing, filing and prosecuting any such patent applications. However, if a Party does not wish to pay costs and expenses associated with preparing, filing and prosecuting a particular patent application, it may notify the other Party in writing. In such case, the notified Party may either abandon the patent application in question or may proceed with the application, in which event the other Party will not be a joint owner of any resulting patent.
- (e) Remedies for Violation of Contractor Rights. * * * In such case, Contractor shall be entitled at its election to royalties on commercially reasonable terms pursuant to a license agreed to by the Parties or by an arbitrator in the event the Parties are unable to agree upon the terms of such license, in addition to all other damages and remedies available to Contractor at law, in equity or otherwise, subject to Contractor's * * * as provided in this Subsection.

10.5 DOCUMENTATION.

- (a) In accordance with the SOW, Contractor agrees to furnish and convey to AIL (and Service Providers and Users in the case of User Documentation), at no additional charge, such Documentation in the English language covering the Terminals delivered under this Agreement. Contractor shall develop, publish and provide to AIL, Service Providers and Users as appropriate, accurate and complete Documentation, written in a manner reasonably understood by AIL, Service Providers and Users, for each such Terminal produced hereunder. Contractor shall make available to AIL, on an as-ordered basis, additional copies of such Documentation at commercially reasonable prices. Unless

otherwise specified in an Order therefor and agreed to by Contractor, all Documentation shall be in the English language and Contractor agrees to have such Documentation translated as necessary to support AIL's international sites subject to agreement on the cost responsibility thereof.

- (b) In addition to the rights set forth in Subsection (a), Contractor hereby grants AIL the right to reproduce, modify, distribute and enhance the Documentation. AIL also has the right to make copies of such modifications and enhancements and distribute the same. In the event AIL modifies the Documentation in a manner not directed or approved by Contractor, Contractor will not be responsible for AIL's use of such Documentation to the extent it is modified by AIL. Contractor may review and approve AIL's proposed modifications and enhancements to the Documentation.

10.6 TECHNICAL MATERIALS ESCROW.

- (a) Within thirty (30) days following the Effective Date, Contractor, AIL and Fort Knox Escrow Services, Inc. will enter into a written escrow agreement substantially in the form attached hereto in Schedule 10 (the "Escrow Agreement") pursuant to which Contractor will deposit with the escrow agent applicable Technical Materials available at that time related to such Terminals (the "Escrowed Materials"). Contractor shall update the Escrowed Materials following the conclusion of Alpha and Beta testing, upon delivery of the Seed Order and at the end of each calendar quarter thereafter. The Parties shall share the fees payable to Fort Knox Escrow Services, Inc. equally. Contractor represents and warrants that the Escrowed Materials shall, at all times, be sufficient for an individual reasonably experienced in satellite telecommunications technology to understand and utilize such materials to manufacture and support the Terminals as contemplated herein. During the Term, Contractor will maintain such Escrow Materials current with respect to the Terminals then utilized by AIL. Subject to the restrictions set forth in the Escrow Agreement, the escrow agent will make the Escrow Materials available to AIL upon AIL's notice to the Contractor and the escrow agent that one of the following has occurred if Contractor does not, within ten (10) days thereafter, notify AIL and the escrow agent that it objects to the release of the Escrow Material:
- (i) the institution by Contractor of insolvency, receivership or bankruptcy proceedings;
 - (ii) a general assignment by Contractor for the benefit of creditors,
 - (iii) the appointment of a receiver for Contractor,
 - (iv) the filing by creditors of Contractor of a petition in bankruptcy against Contractor which is not stayed or dismissed within sixty (60) days;
 - (v) Contractor ceasing to manufacture or to deal in the Terminals;
 - (vi) Contractor's failure to reasonably correct or cure any material Defects in the Terminals in accordance with this Agreement following Contractor's receipt of a written notice thereof from AIL; or
 - (vii) AIL's termination of this Agreement for Cause in accordance with Section 23.1

(items (i) through (vii) hereinafter referred to as the "Release Conditions").

- (b) In accordance with the Escrow Agreement, the escrow agent will give written notice to Contractor contemporaneously with the delivery of the Escrow Materials to AIL. In the event it is determined that a Release Condition did not occur or is cured to AIL's reasonable satisfaction, AIL will be required to promptly return the Escrow Materials to the escrow agent.
- (c) AIL shall be entitled to use the Escrow Materials as necessary to support and maintain its purchased Terminals as well as to manufacture, or have manufactured, Terminals only to fulfill Contractor's obligations hereunder, including obligations that may arise in the future or at Contractor's election in accordance with the terms hereof. Notwithstanding the foregoing, in the case of Subsection 10.6(a)(vi) above, AIL may use the Escrow Materials only to cure or resolve such Defect. Such use shall include the right to copy, disclose, modify, enhance, upgrade, revise, and create derivative works of such Escrow Materials. AIL shall be entitled to permit its officers, employees, agents, advisors, third party consultants and Service Providers to use the Escrow Materials on behalf of AIL. With respect to AIL disclosures to third parties, AIL agrees to only disclose the Escrow Materials to third parties that are working for AIL under a confidentiality arrangement. AIL will immediately return the Escrow Materials, including all copies thereof, to the Escrow Agent when AIL no longer requires the Escrow Materials for the purposes permitted hereunder.

11. TRAINING; MAINTENANCE

11.1 TRAINING.

Contractor will provide AIL and its Service Providers training in accordance with the following:

- (a) During a twelve month period, as mutually agreed by the Parties, Contractor shall provide training on agreed-upon terms and prices on a worldwide regional basis to AIL, Service Providers, and their designated third party maintenance providers on Terminal installation procedures, including software loading, antenna polarization, antenna mounting, terminal initialization, antenna pointing, satellite acquisition, software use and maintenance, special installation procedures for harsh environment and high-rise buildings, and any other subjects necessary to provide first level maintenance and to install the Terminals. These courses will be available at Contractor-designated facilities or at AIL-designated facilities when mutually agreed. This training will consist of formal and informal classroom instruction and actual hands-on training in laboratory environments. Contractor also reserves the right to subcontract the training to designated third party vendor. Contractor will have the option to enroll AIL or Service Provider students into training classes held at either third party or Contractor's training facilities.
- (b) Contractor shall provide AIL (or its Service Providers at AIL's sole discretion), * * *, two training courses (with content consistent with the content and topics described in Subsection (a) above) for attendance by up to twenty-five (25) AIL designated individuals per course. Additional training desired by AIL or its Service Providers will be mutually agreed upon.
- (c) Contractor shall develop and furnish all training materials.

- (d) Contractor shall, at commercially reasonable prices and terms, provide all remedial training and training on any changes, updates and enhancements to the Terminals or as otherwise necessary for AIL and its Service Providers to be capable of performing all necessary services, including installation, operation, maintenance, provisioning, monitoring and control of the Terminals.

11.2 MAINTENANCE.

Contractor will have the ability to service or will have an agreement with others to service Terminals in each country where Terminals are distributed. Contractor shall create service manuals and maintenance documents, in the English language, for all versions and generations of the Terminals, which shall be provided to AIL and Service Providers for use by them and their designated third party maintenance providers. During the Warranty Period and Extended Warranty Period, Contractor shall provide second-tier customer support to the help desk of designated maintenance providers of AIL, its Service Providers or Users on a 24 x 7 x 365 basis to answer such maintenance providers' maintenance-related questions with respect to the Terminals. The Parties agree to develop and agree to appropriate standards for promptness of help desk support (responsiveness, resolution and escalation), which shall constitute part of the Service Standards as described in Section 13.1 below. At AIL's request, Contractor shall provide to AIL the costs and fees associated with translating and providing non-English language service manuals and maintenance documents.

12. CHANGE PROCEDURES AND CONTRACT MANAGEMENT

12.1 DEVELOPMENT PHASE CHANGE PROCEDURES.

During the Term, AIL may require changes in this Agreement, including the applicable provisions of the SOW. Within fifteen (15) days of AIL's requested change, Contractor shall provide AIL with a summary of the effect of such changes on the price (recurring and non-recurring) and time required for performance, and AIL shall elect whether to pursue such change. Should any such change increase or decrease the price of or time required for performance of Contractor's or its Subcontractors' obligations hereunder, Contractor shall be entitled to a reasonable adjustment in the Milestone Payments, Wholesale Price or delivery schedule, as applicable. Price adjustments shall account only for the net cost impact incurred by Contractor as a result of the change plus a reasonable profit thereon not to exceed * * *. Contractor will provide reasonably detailed back-up cost data to support its claim for adjustment. All AIL-proposed Changes developed under this Section shall be warranted and supported by Contractor as if part of the Terminal when first deployed.

12.2 PRODUCTION PHASE CHANGE PROCEDURES.

- (a) Contractor shall also develop and provide for sale to AIL Terminal modifications and enhancements and new commercially available products in accordance with the following:
 - (i) From time to time during the Term, AIL may provide to Contractor a proposed change in or addition to the Terminals or a written idea for a new product (an "AIL-proposed Change"). All such AIL-proposed Changes shall be considered AIL Background Information for purposes hereof; provided, however, that this will not restrict the Parties making the AIL-proposed Change subject of the proposal an agreed upon commercial product as provided herein.

- (ii) Within thirty (30) days of receipt of an AIL-proposed Change, Contractor shall propose a price for the AIL-proposed Change and applicable delivery schedule. In determining such price, if the AIL-proposed Change includes a request for Contractor to correspondingly reduce or eliminate any components of the Terminals it is then providing, such components shall be considered "Replacements." In that event, the Parties shall determine the costs and expenses required to provide the Replacements and the reduction in the costs and expenses related to the components being replaced, and there shall be an appropriate adjustment in the applicable price for such costs and expense being replaced.
- (iii) If AIL in its sole discretion accepts such price with respect to items and delivery schedule (A) Contractor, at its sole cost and expense, shall design, develop and/or manufacture or have manufactured such AIL-proposed Change in accordance with the proposed delivery schedule and (B) AIL shall grant Contractor (including its Subcontractors, if necessary) all rights it has as necessary to permit Contractor (including its Subcontractors, if necessary) to design, develop and/or manufacture such AIL-proposed changes.
- (iv) All AIL-proposed Changes developed under this Subsection (a) shall be warranted and supported by Contractor as if part of the Terminal when first deployed.
- (v) To the extent that any AIL-proposed Change effects a delivery schedule hereunder, the Parties will appropriately adjust Contractor's delivery obligations hereunder.
- (b) No changes in or additions to any Terminal, Equipment, Software or new products provided herein, or additional charges therefore, shall be made unless approved in writing by the AIL Contract Manager. Notwithstanding anything to the contrary herein, Contractor is authorized, without AIL's prior approval, to make changes that do not affect a Terminal's compliance with applicable Standards and the applicable provisions of the SOW, including applicable interface specifications, in a manner consistent with Section 6.5 above.

12.3 CONTRACTOR-PROPOSED CHANGES.

- (a) All Contractor-proposed changes to the SOW shall be submitted to AIL in a written proposal that describes in reasonable detail the proposed change and the technical, performance and economic effects on the Terminals and the AIL System of such change. To maintain the viability of AIL-approved sources of each class of Terminals, all changes to the SOW proposed by Contractor or co-exclusive vendor (either, the "Proposing Vendor") for any Terminal shall be evaluated by AIL, and may be evaluated at AIL's discretion by the other co-exclusive vendor (the "Evaluating Vendor") for such Terminal to determine that such change will not have a substantial negative effect on the Evaluating Vendor's continued ability to produce such Terminal competitively. If AIL determines that such change will have a substantial negative effect, AIL may decline to change the SOW, or AIL may direct the Proposing Vendor to license to the Evaluating Vendor such Intellectual Property Rights of the Proposing Vendor as may be required to reasonably enable the Evaluating Vendor to be able to manufacture Terminals to meet the revised SOW, all at a commercially reasonable terms and royalty or license fee. The

foregoing provision shall not be enforceable against Contractor unless AIL's other co-exclusive terminal vendor is bound by a substantially similar provision.

- (b) If changes to any Standard from time to time after the Effective Date require material changes to be made to the Terminals (or any configuration of Terminals being shipped to a particular country) that would result in a material impact on either the applicable Wholesale Prices, non-recurring costs and expenses or delivery schedule of such Terminals, the Parties agree to negotiate in good faith and to reasonably adjust Contractor's applicable Wholesale Price, non-recurring payments and delivery schedules to accommodate such Standards change. Each Party will advise the other Party at such time as it becomes aware of any such changes or proposed changes to any Standard.

12.4 CONTRACT MANAGEMENT.

- (a) As of the Effective Date, each Party shall appoint an executive to act as contract manager having the primary responsibility for performance of its company's obligations hereunder and for managing the relationship between the Parties (the "Contractor Contract Manager" or the "AIL Contract Manager", as the case may be). Each Contract Manager shall devote the necessary time and efforts to managing its company's responsibilities under this Agreement, and have authority to escalate all unresolved problems to its senior management. Each Party also shall identify a primary contact who shall serve as the point of contact for all day-to-day and operational issues.
- (b) Beginning on the Effective Date and pursuant to the SOW, Contractor shall provide monthly reports (the format and content of which shall be mutually agreed by the Parties and which shall include new issues, resolutions of previously identified issues, status, management, performance to SOW and to applicable Standards, schedules, change control, Terminal failures, shipment reports, purchase order reports, remediation and repair, quality assurance, technology reports and project schedule charts) and such other information as AIL may reasonably request and shall meet with AIL as necessary to inform AIL on the status of the Terminals and Services.
- (c) Beginning with the quarter-ending after the first production Terminal shipments, Contractor shall provide, in accordance with the SOW, quarterly - reports as required by the SOW (the format and content of which shall be mutually agreed by the Parties) and regarding (1) orders and shipment, including a detailed itemized description of Terminals ordered and/or shipped during the reporting period, the ship-to location and date of delivery, and aggregate dollar value of Terminals shipped during the reporting period; (2) Terminal failure rate and causes/pattern of such failures, and Terminal repairs and replacements; (3) status of Type Approvals; and (4) such other information as AIL may reasonably request.
- (d) Contractor agrees to maintain open and collaborative dialogue with AIL and offer full disclosure with respect to:
- (i) the Milestone and Payment Schedule milestones and decisions made by Contractor on an on-going basis throughout the design process and the remainder of the term;
 - (ii) the status of delivery of Terminals and Services provided hereunder;

- (iii) the state of affairs regarding any aspect of the Terminals;
- (iv) all pertinent limitations and problems with the Terminals; and
- (v) its known limitations of its work or the Terminals.

12.5 CONTRACTOR PERSONNEL.

- (a) "Key Contractor Personnel" shall be the Contractor and Subcontractor personnel filling the positions identified in Schedule 11 hereto.
- (b) The Key Contractor Personnel shall be located at the site(s) that the Parties believe will permit the most effective performance of Contractor's obligations hereunder.
- (c) Before assigning an individual to any position described in Schedule 11, whether as an initial assignment or a subsequent assignment, Contractor shall notify AIL of the proposed assignment, shall introduce the individual to appropriate AIL representatives, and shall provide AIL with a biography and other information about the individual as reasonably requested by AIL. If AIL in good faith objects to the proposed assignment, the Parties shall attempt to resolve AIL's concerns on a mutually agreeable basis. If the Parties have not been able to resolve AIL's concerns within five (5) business days, Contractor shall not assign the individual to that position and shall propose to AIL the assignment of another individual of suitable ability and qualifications. The Key Contractor Personnel that have been approved as of the Effective Date are listed in Schedule 11. Key Contractor Personnel may not be transferred or re-assigned, except in the case of termination of employment, until a suitable replacement has been approved by AIL, such approval not to be unreasonably withheld. In no event shall any Key Contractor Personnel be transferred or re-assigned by Contractor to perform work for a Competitor of AIL deploying satellite switched networking technology for a period of * * * following the date such individual terminates work related to this Agreement. Contractor shall conduct an exit interview with all Key Contractor Personnel who terminate their employment with Contractor to review their confidentiality and non-disclosure obligations as provided herein.

12.6 REPLACEMENT, QUALIFICATIONS, AND RETENTION OF CONTRACTOR PERSONNEL.

- (a) In the event that AIL determines in good faith that the continued assignment to work performed hereunder of a Contractor employee is not in the best interest of AIL, then AIL shall give Contractor written notice to that effect requesting that the employee be replaced. Promptly after Contractor's receipt of such a request by AIL, Contractor shall investigate the matters stated in the request and discuss its findings with AIL. If AIL still in good faith requests replacement of the employee, the Parties shall negotiate in good faith the resolution of this matter.
- (b) The personnel Contractor assigns to perform its obligations hereunder shall be properly educated, trained and qualified for the services they are to perform.
- (c) AIL and Contractor both agree that it is in their best interests to keep the turnover rate of the Contractor Personnel performing its obligations hereunder to a reasonably low level. Accordingly, if AIL determines that turnover rate of the Contractor Personnel is excessive and so notifies Contractor, Contractor shall meet with AIL to discuss the

general reasons for the turnover rate. If appropriate, Contractor shall submit to AIL its proposals for reducing the turnover rate, and the Parties shall mutually agree on a program to bring the turnover rate down to an acceptable level. In any event, notwithstanding transfer or turnover of Contractor Personnel, Contractor remains obligated to perform its obligations hereunder without degradation.

12.7 AIL THIRD PARTY SERVICES AND PRODUCTS.

- (a) Contractor agrees to provide all reasonable cooperation with the agents, consultants, subcontractors and third party suppliers of AIL as requested by AIL to achieve functional compatibility of the Terminals with the AIL System.
- (b) Third parties retained by AIL shall comply with Contractor's reasonable security and confidentiality requirements, and shall, to the extent performing work on Contractor-owned, licensed or leased Software, Terminals or Equipment, comply with Contractor's reasonable work standards, methodologies and procedures. Contractor shall immediately notify AIL if an act or omission of such a third party may cause a problem or delay in providing the Terminals or Services and shall work with AIL to prevent or circumvent such problem or delay.

12.8 PRIME CONTRACTOR.

Contractor acknowledges and agrees that it is the prime contractor under this Agreement and as such, assumes full responsibility and liability for the performance of all Contractor Personnel and third parties used by Contractor hereunder to the same extent as if such obligations were performed by Contractor. Without limiting the generality of the foregoing, Contractor shall be responsible for discharging any Liens placed on any Terminals, Equipment or Software purchased by AIL, its Service Providers or Users hereunder, except for purchase money security interests as described in Section 24.17 below. Contractor shall be AIL's sole point of contact regarding the work performed hereunder, including with respect to payment.

12.9 CONTRACTOR'S USE OF SUBCONTRACTORS.

- (a) As of the Effective Date, AIL hereby approves the following Subcontractors: the Principal Subcontractors and those entities set forth in Schedule 12. All Subcontractors to which Contractor discloses AIL Confidential Information must agree in writing to be bound to the non-disclosure, confidentiality and invention assignment provisions contained herein.
- (b) Except as provided in Subsection (a) of this Section and to the extent AIL may agree otherwise in writing, Contractor shall not subcontract any of its obligations under this Agreement, which shall include the replacement of any previously approved Subcontractor, if the value of the subcontract is * * * or more (such subcontract or replacement subcontract, the "Material Subcontract" and the subcontractor proposed to perform same, the "Material Subcontractor"), except as follows:
 - (i) Prior to entering into a Material Subcontract, Contractor shall give AIL not less than thirty (30) days' prior written notice specifying the Services affected, a description of the scope and material terms (other than price) of such Material Subcontract, and the identity and qualifications of the proposed Material

Subcontractor. If AIL reasonably objects to the use of a proposed Material Subcontractor, the parties shall discuss AIL's concerns and Contractor will either use a different Material Subcontractor or provide AIL a detailed rationale in writing as to why it will use the proposed Material Subcontractor.

- (ii) Contractor shall disclose to the Subcontractor all the terms and conditions of the Agreement that may impact the Subcontractor, and the Subcontractor will be required to comply with the obligations imposed by those terms and conditions.
- (iii) AIL also shall have the right during the Term to revoke its prior approval of a Material Subcontractor and direct Contractor to replace such Subcontractor or take such other action as may be mutually agreed by the Parties, if the Subcontractor's performance results in an uncured material breach of this Agreement. Notwithstanding the foregoing, AIL does not have the unilateral right to revoke Contractor's use of any Principal Subcontractor as a Subcontractor hereunder.
- (iv) Without limiting the generality of Contractor obligations set forth in Section 12.6, Contractor shall remain responsible for obligations performed by Subcontractors to the same extent as if such obligations were performed by Contractor employees. Contractor shall be AIL's sole point of contact regarding the Terminals and Services, including with respect to payment. Contractor shall not disclose Confidential Information of AIL or Joint Confidential Information to a Subcontractor unless and until such Subcontractor has agreed in writing to protect the confidentiality of such information in a manner substantially equivalent to that required of Contractor under this Agreement, and in all respects, only on a "need-to-know" basis.

12.10 ON-SITE REPRESENTATIVES.

Contractor agrees to provide reasonable office space and telephone and data line access at Contractor's primary design and manufacturing site(s) to AIL employees and designated representatives from time to time (each, an "On-Site Representative"). Each On-Site Representative shall have access to the work being performed by Contractor hereunder on a non-interference basis, including:

- (a) the ability to move without escort within designated unrestricted areas within appropriate facilities;
- (b) visibility into development and production of Terminals;
- (c) right to attend regularly scheduled meetings, reviews and tests; and
- (d) electronic access to Terminal-related documents and a right to copy same.

13. SERVICE STANDARDS

13.1 GENERAL.

By no later than sixty (60) days after the Effective Date, the Parties will develop and agree upon meaningful quantitative and qualitative standards of service governing Contractor's provision of the Terminals to AIL, Service Providers and Users, including the components thereof, and

performance of the Services, in which shall be attached hereto as Schedule 13 (collectively, the "Service Standards"). Contractor agrees to perform its applicable obligations hereunder in accordance with the Service Standards.

13.2 CONTRACTOR'S FAILURE TO PERFORM.

Contractor shall, on each occasion on which it fails to meet any Service Standard:

- (i) Promptly investigate and report on the root causes of the problem;
- (ii) Correct the problem and begin meeting the Service Standard as soon as possible;
- (iii) * * *; and
- (iv) Advise AIL of the status of remedial efforts being undertaken with respect to such failure.

13.3 PERIODIC REVIEWS.

Upon six (6) months after the date of Acceptance of the Terminals, and at least annually thereafter, AIL and Contractor shall review the Service Standards and shall make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology and methods used to provide the Terminals, including the components thereof, and Services.

13.4 MEASUREMENT AND MONITORING TOOLS.

Contractor shall utilize the necessary measurement and monitoring tools and procedures required to measure and report Contractor's provision of the Terminals, and Services against the applicable Service Standards. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Service Standards, and shall be subject to review, examine and/or audit by AIL. Contractor shall provide AIL with information and access to such tools and procedures upon request, for purposes of verification.

13.5 AIL'S FAILURE TO PERFORM.

AIL's failure to perform any of its responsibilities set forth in this Agreement (other than AIL's obligations to pay undisputed amounts under Section 15.4) shall not be grounds for termination by Contractor. The foregoing sentence shall not limit Contractor's right to claim that AIL's failure to perform is a material breach for any other purpose under this Agreement. Contractor's nonperformance of its obligations under this Agreement shall be excused if and to the extent (i) such Contractor nonperformance results from AIL's failure to perform its responsibilities, (ii) Contractor provides AIL with reasonable notice of such nonperformance, and (iii) Contractor uses commercially reasonable efforts to perform its obligations notwithstanding AIL's failure to perform.

13.6 AIL'S SUSPENSION OF WORK.

Notwithstanding the foregoing Section 13.5, AIL, by written notice, may at any time suspend work (including suspension of production work, delivery of Terminals and payment therefor, excluding suspensions due to catastrophic failures of satellites) for a period not to exceed * * *, and for further periods agreed to by the Parties. The Parties will agree to appropriate

adjustments to the Terminal Wholesale Price, delivery schedule and Milestones, but only to the extent that Contractor demonstrates that such suspension results in an increase in the cost to Contractor and a delay in performance hereunder. Such suspension of work shall not be considered a failure to perform or breach of this Agreement. Notwithstanding the foregoing, if AIL suspends work more than * * * period of the Term (excluding suspensions due to catastrophic failures of satellites), Contractor, at Contractor's election, may require upon written notice to AIL that AIL terminated this Agreement for its convenience and in accordance with Section 23.2. The Parties shall work together to minimize the impact of such suspension on pricing, delivery schedule and Contractor's performance (and AIL's liability in the event of termination). Any such suspension does not excuse AIL from paying undisputed amounts.

13.7 GENERAL PERFORMANCE AWARD.

When Contractor provides exceptional performance (including, without limitation, meeting delivery requirements of AIL, Service Providers and/or Users), AIL, in its sole discretion, may pay Contractor a monetary award under this Agreement (the "General Performance Award"). Such General Performance Award may be in an annual amount to be determined by AIL within sixty (60) days after the Effective Date. Contractor has no "right" to receive a Performance Award in a given year. AIL may at its sole discretion pay the General Performance Award to Contractor.

14. TERMINAL PRICES

14.1 GENERAL.

Contractor agrees to offer Terminals for sale to AIL's Service Providers at the prices per Terminal no greater than those Wholesale Prices offered to AIL hereunder. Accordingly, AIL and its Service Providers may purchase Terminals, Equipment, Services and Documentation (in addition to the Terminals covered in the Seed Order and MQPC) at prices that do not exceed the Wholesale Prices. The Wholesale Price of each Terminal shall include such Terminal and the items set forth in Section 1.7 of the SOW. If Contractor fails to offer the Terminals for sale at prices no greater than the Wholesale Prices specified herein (notwithstanding the fact that Contractor and the purchasing party (either AIL or a Service Provider) mutually agree upon a different purchase price), AIL shall be entitled to terminate the Co-Exclusivity Right, as its sole remedy during the Co-Exclusivity Period, as to such class of Terminal or all classes of Terminals after thirty (30) days written notice, unless in which time Contractor cures the pricing breach. Following the Co-Exclusivity Period, if Contractor materially fails (after the applicable cure period) to offer the Terminals for sale at prices no greater than the Wholesale Prices, as specified herein or determined in accordance with Section 14.2 (unless otherwise mutually agreed by Contractor and AIL or a Service Provider, as the case may be), AIL shall be entitled to terminate this Agreement in accordance with Section 23.1(a) and cancel its outstanding Orders in accordance with Section 8.8. If AIL so terminates this Agreement for Contractor's uncured material breach of this Section, (i) AIL shall be entitled to have Contractor's obligations hereunder completed by another party or parties, and (ii) Contractor shall not be liable to AIL for damages pursuant to Section 23.3(b) below or otherwise, provided that Contractor reasonably fulfills its obligations under Sections 23.3(a) and 23.4 and reasonably performs its other post-termination obligations hereunder. Notwithstanding the foregoing, AIL may not terminate this Agreement for Cause as provided above if AIL, at the time of termination, has two or more active vendors of Terminals (excluding Contractor). The foregoing remedies shall be AIL's sole remedies for breach of this Section.

14.2 DETERMINATION OF WHOLESALe PRICES; ADJUSTMENTS.

(a) The applicable Wholesale Prices for Terminals shall be mutually agreed by the Parties prior to the beginning of Contract Year * * * and each subsequent Contract Year as follows. AIL and Contractor shall meet at least three (3) months prior to the start of the Contract Year and mutually agree upon a forecast for that Contract Year (on both quarterly and annual bases) of the approximate number of Terminals and Comparable Terminals that AIL expects to be sold and delivered into all markets by all vendors of Terminals and Comparable Terminals (the "Annual Forecast Number") and establish the Wholesale Price for such Contract Year in accordance with Schedule 4, as may be amended by the Parties to provide for additional Terminal configurations and Contract Years through the end of the Term. This Annual Forecast Number shall be updated on a quarterly basis against the actual quantities sold by all Terminal vendors in all markets and any other factors as agreed by the Parties, and the Wholesale Price applicable to the remainder of the Contract Year shall be adjusted up or down in accordance with Schedule 4 based on the revised Annual Forecast Number. The initial Annual Forecast Number is set forth in Schedule 6, or such increased number as the Parties may agree. The Wholesale Price offered to AIL and Service Providers for that particular Contract Year shall not exceed the Wholesale Price set forth on Schedule 4 corresponding to the Annual Forecast Number. The Parties shall mutually agree upon Wholesale Prices for Contract Years * * * and beyond. If the Terminals (or costs to produce such Terminals resulting from factors beyond Contractor's reasonable control) have not substantially changed from Contract Year * * * to Contract Year * * * and beyond, the Wholesale Prices for Terminals delivered in Contract Year * * * and beyond shall not exceed the Wholesale Prices for Contract Year * * *. Wholesale Prices set forth in Schedule 4 (as of the Effective Date), are for Terminals complying, without any modifications which would result in a material impact on Terminal non-recurring engineering expense, Wholesale Price or delivery schedule, with relevant FCC, ETSI and EU standards (as in effect as of the Effective Date), including Type Approval and blanket licensing requirements (when appropriate), for all * * * Countries. It is the intent of the Parties that such Terminals are suitable for similar authorizations including Type Approval and blanket licensing (if applicable). In the event a * * * Country is identified which would require a material Terminal modification that would materially impact Terminal non-recurring engineering expense, Wholesale Price or delivery schedule, Contractor will provide AIL a proposal pursuant to Section 12.3(b). The Parties may amend Schedule 4 from time to time as needed to include Wholesale Prices for additional Terminal configurations supporting Standards for * * * Countries or for other Terminal modifications and enhancements in accordance with Section 12.3(b), on a reasonable price basis.

(b) By no later than January 31 of the year following the subject Contract Year (unless otherwise agreed by the Parties), AIL shall report to Contractor the aggregate number of Terminals and Comparable Terminals actually sold and delivered by Contractor and all other vendors of Terminals and Comparable Terminals. In addition, within thirty (30) days of the end of each calendar quarter, AIL shall update such forecast to Contractor as described above.

14.3 MOST FAVORED CUSTOMER AND BENCHMARKING.

(a) Most Favored Customer. If Contractor provides Terminals, Comparable Terminals or terminals that are substantially functionally similar to Terminals, to a Service Provider

or User of AIL or to a Competitor of AIL and the prices charged to such User or Competitor for such terminals are lower than the prices charged to AIL for similar business terms, quantities and delivery dates, on a regional basis, the prices charged to AIL shall be appropriately adjusted to provide to AIL the benefit of such lower prices. Such adjustment shall be retroactive to the first date on which the lower charges to such User or Competitor became effective. Within thirty (30) days after the Effective Date of this Agreement and each anniversary of the Effective Date during the Term (as it may be extended), Contractor's chief financial officer shall certify in writing to AIL that Contractor is in compliance with Contractor's Most Favored Customer Status obligations herein and shall provide the information reasonably requested by AIL to verify such compliance. AIL shall retain the right to review, examine and/or audit Contractor using third party independent auditors if (1) the above certification is not so provided by Contractor or (2) AIL has reason to believe that information provided by Contractor is inaccurate.

- (b) **Benchmarking.** If AIL presents Contractor with credible evidence that terminals for comparable and competitive systems (i.e., Competitors of AIL) or for the AIL System are available in a given country at Prices more than * * * lower ("Substantially Lower Prices") than those offered by Contractor for comparable quantities under normalized payment terms (to account for net present value of the respective payment plans) under similar terms, conditions and specifications, AIL shall provide Contractor with the opportunity to match said lower prices. If Contractor elects not to match said lower prices, AIL shall be entitled to terminate the Co-Exclusivity Right with Contractor with respect to that country. This provision shall not apply to Wholesale Prices offered by AIL's other co-exclusive vendors during the Co-Exclusivity Period.
- (c) **Pricing Cooperation.** Both Parties shall cooperate to assure that the price AIL charges for its services and the price Contractor charges for its Terminals are competitive in each country in which such services and Terminals are offered for sale by AIL and Contractor, respectively. Both Parties agree to work diligently throughout the Term to lower the pricing of the Terminals to become and remain competitive in the User markets served by AIL.

14.4 TAXES.

Unless otherwise agreed to by the Parties in an Order, the Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

- (a) Each Party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts.
- (b) Contractor shall be responsible for any sales, use, excise, value-added, services, consumption, and other taxes, customs and duties assessed or otherwise payable by Contractor on any goods or services that are used or consumed by Contractor in providing the Terminals and Services where the tax is imposed on Contractor's acquisition or use of such goods or services and the amount of tax is measured by Contractor's costs in acquiring such goods or services.
- (c) AIL shall be responsible for any sales, use, excise, value-added, services, consumption, or other tax, customs and duties assessed on any particular Terminal or Service

purchased by AIL and delivered by Contractor to AIL or designee hereunder. Such taxes are in addition to the prices set forth herein and shall be identified separately on invoices. AIL shall also be responsible for taxes on goods and services for those items AIL has agreed to reimburse Contractor in this Agreement.

- (d) The Parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Contractor's invoices shall separately state the amounts of any taxes Contractor is collecting from AIL. Each Party shall provide and make available to the other any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials or services, and other exemption certificates or information reasonably requested by either Party.
- (e) Contractor shall promptly notify AIL of, and coordinate with AIL the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which AIL is responsible hereunder, it being understood that with respect to any claim arising out of a form or return signed by a Party to this Agreement, such Party shall have the right to elect to control the response to and settlement of the claim, but the other Party shall have all rights to participate in the responses and settlements that are appropriate to its potential responsibilities or liabilities. If AIL requests Contractor to challenge the imposition of any tax, and Contractor agrees to do so, AIL shall reimburse Contractor for the reasonable legal fees and expenses it incurs. AIL shall be entitled to any tax refunds or rebates granted to the extent such refunds or rebates are for taxes that were paid by AIL.

15. AIL PAYMENTS TO CONTRACTOR AND INVOICING

15.1 INITIAL PAYMENT.

Within ten (10) days after AIL's receipt of an invoice therefor by Contractor, AIL will pay to Contractor the sum of * * * (the "Initial Payment") by electronic funds transfer in accordance with Contractor's wire instructions provided to AIL prior to the Effective Date. The Initial Payment shall constitute an NRE Payment (for Milestone No. 1) as described in Section 15.2 below.

15.2 PAYMENTS.

- (a) In accordance with the Milestone and Payment Schedule, AIL will pay Contractor nonrecurring engineering payments in the aggregate of * * * (the "NRE Payments"). NRE Payments shall be conditioned on the achievement by Contractor of certain Milestones, as described in Section 15.3 below. If within sixty (60) days of the Effective Date, AIL notifies Contractor in writing that it does not desire Contractor to develop and produce * * * capability of the Terminal, then AIL's aggregate NRE Payment obligation hereunder shall be reduced to * * *, and the Milestone Payment for Milestone 8 shall be reduced by * * *. The NRE Payments shall cover services provided by Contractor including, without limitation, Terminal design and development obligations; the development, integration and production of the adaptive equalizer capability of the Terminals (as set forth in the SOW); Terminal prototypes; pre-production Terminals; Acceptance testing; Support Services (of up to * * * staff-hours, with the allocation of such hours as approved by AIL), as defined in Section 3 of the SOW, and Contractor shall be responsible for such other obligations as are set forth in the SOW. If AIL

requests Contractor support hours in excess of * * * staff-hours, Contractor shall provide such services at rates not to exceed Contractor's time and materials rates set forth in Schedule 14. AIL will reimburse Contractor for its reasonable travel and related expenses required in performing Support Services, in accordance with Schedule 14. All Milestone Payments shall be paid in accordance with Section 15.3 and 15.4 below. The NRE Payment hereunder shall satisfy all AIL's unpaid financial obligations to Contractor pursuant to that certain Contract for Engineering Services Agreement dated March 29, 2000 (the "Services Agreement").

- (b) Following Contractor's successful completion of Production Readiness Review as set forth in the SOW and AIL's Acceptance of same, Contractor shall invoice AIL for an amount equal to * * * of the Seed Order value. AIL shall pay such invoiced amount at least one hundred eighty days (180) prior to the initial scheduled date of delivery of the Seed Order Terminals pursuant to Schedule 18, provided that (i) Contractor timely invoices AIL, (ii) Contractor has successfully completed and AIL has approved Contractor's readiness to deliver the Seed Order in accordance with Section 3.2.4 of the SOW and (iii) Contractor certifies to AIL in writing that Contractor continues to meet the requirements of the Production Readiness Review. The remaining balance of * * * per Terminal shall be due upon delivery of each Terminal in accordance with Sections 15.3 and 15.4 below.

15.3 INVOICING.

- (a) Following (i) Contractor's successful completion of each Milestone in accordance with the applicable Milestone Acceptance Criteria and all other applicable requirements of this Agreement and (2) Acceptance by AIL that the Milestone is complete, Contractor may invoice AIL for the applicable Milestone Payment. Each invoice shall be accompanied by Contractor's written certification that each Milestone to which the invoice relates has been fully and successfully completed in accordance with the Milestone Acceptance Criteria.
- (b) Upon shipment of Terminals pursuant to an Order (including the Seed Order), Contractor will invoice AIL or the applicable Service Provider for amounts due pursuant to this Agreement for such Terminals. Such invoice shall include invoice date, Order number, Terminal part numbers and descriptions, quantities, unit prices and total amount due.
- (c) For deliverables or services provided by Contractor (as mutually agreed by the Parties and other than those required hereunder or under the SOW), Contractor will invoice AIL upon delivery or at such time as otherwise mutually agreed. For Services (other than those required hereunder or under the SOW), Contractor will invoice AIL upon completion of the performance of such Services or at such times as mutually agreed. For annual Extended Warranty Services, Contractor will invoice AIL quarterly in advance. For fees and expenses incurred under Section 15.2 (for travel expenses related to the Support Services) and under Schedule 14, Contractor will invoice AIL monthly in arrears. All such invoices shall include invoice date, Order number, description, quantities, unit prices and total amount due. For invoices where the prices are not set forth in the Agreement, Contractor shall provide upon request, the calculations utilized to establish any charges and supporting details and information as to charges; provided, however that to the extent that a firm pricing quotation previously delivered to AIL by Contractor expressly provides such calculations, details and information, Contractor may

cross-reference such quotation in the applicable invoice in lieu of Contractor including such calculations, details or information, as applicable.

- (d) Invoices shall separately state the amounts of any taxes as set forth in Section 14.4(c) that Contractor is collecting from AIL.

15.4 PAYMENT DUE.

- (a) Subject to Sections 15.8 and 21.3, and the other provisions of this Article 15, invoices provided for under Section 15.3 and properly submitted to AIL pursuant to this Agreement shall be due and payable by AIL within thirty (30) days after receipt by AIL. Milestone Payments will be considered due and payable when the corresponding Milestone is deemed Accepted.
- (b) All amounts due and payable to Contractor under this Article 15 shall be paid, at AIL's option, either (i) by check payable to the order of Contractor or (ii) by electronic funds transfer to Contractor from account(s) designated by AIL.
- (c) Invoices for payment of * * * hereunder and any other undisputed amounts owed by Contractor to AIL shall be due and payable by Contractor within thirty (30) days after receipt of an invoice by Contractor.
- (d) All undisputed payments made after the due date hereunder will be subject to an interest charge at an annual interest rate equal to * * *, for each calendar day the payment is overdue until the date payment is made.

15.5 ACCOUNTABILITY.

Contractor shall maintain complete and accurate records of and supporting documentation for the amounts billable to and payments made by AIL hereunder, in accordance with Article 17 and with generally accepted accounting principles applied on a consistent basis. Contractor agrees to provide AIL with documentation and other information with respect to each invoice as may be reasonably requested by AIL to verify accuracy of the invoices and compliance with the provisions of this Agreement.

15.6 PRORATION.

Periodic charges under this Agreement are to be computed on a calendar month basis, and shall be prorated for any partial month.

15.7 SET OFF.

With respect to any amount to be paid by a Party hereunder, under this Agreement or any other agreement between the Parties, the Party may set off against such amount any amount that the other Party is obligated to pay such Party hereunder or thereunder.

15.8 DISPUTED CHARGES.

Subject to Section 15.7, AIL shall pay undisputed charges when such payments are due under this Article 15. AIL may withhold payment of particular charges that AIL disputes in good faith. AIL will notify Contractor in the event it disputes any charges hereunder within ten (10) days of receipt of the invoice for such disputed charges and will set forth its reasons in reasonable detail.

for such dispute in such notification. All disputes under this Section shall be resolved in accordance with Article 22 below. If AIL is found liable to make the disputed payment, AIL will pay late payment charges in accordance with Section 15.4(d).

15.9 ENCUMBRANCES.

Contractor shall not perfect any Lien upon any Terminal, Equipment or Software provided pursuant to this Agreement except as otherwise expressly permitted by this Agreement. All Terminals provided to AIL, its Service Providers and Users shall be free and clear of all Liens in accordance with Section 18.7, subject to Section 24.17.

16. INFORMATION; CONFIDENTIALITY

16.1 CONTRACTOR INFORMATION.

- (a) Contractor Background Information and Contractor Foreground Information shall be and remain the property of Contractor or its licensors, as the case may be and, subject to Subsection 16.3(c), shall constitute Confidential Information of Contractor. AIL shall not possess or assert any Lien against or to Contractor Background Information or Contractor Foreground Information. No Contractor Background Information or Contractor Foreground Information, or any part thereof (excluding Joint Confidential Information), shall be sold, assigned, leased, or otherwise disposed of to third parties by AIL or commercially exploited by or on behalf of AIL, its employees, vendors, contractors or agents, except as expressly provided herein.

16.2 AIL INFORMATION.

- (a) AIL Background Information and AIL Foreground Information shall be and remain the property of AIL or its licensors, as the case may be and, subject to Subsection 16.3(c), shall constitute Confidential Information of AIL. Contractor shall not possess or assert any Lien against or to any AIL Background Information or AIL Foreground Information, or any part thereof (excluding Joint Confidential Information), shall be sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited by or on behalf of Contractor, its employees, vendors, contractors or agents, except as expressly provided herein.
- (b) Upon AIL's request, but subject to any continuing need of Contractor to fulfill its obligations hereunder, the termination or expiration of this Agreement (in whole or in part) for any reason (including termination for cause) or, with respect to any particular data, on such earlier date that the same shall be no longer required by Contractor in order to render the Services hereunder, such AIL Confidential Information (including copies thereof) shall be promptly returned to AIL by Contractor in a form reasonably requested by AIL or, if AIL so elects, shall be destroyed. Contractor shall certify to AIL in writing that Contractor has fully complied with the letter and the spirit of this Subsection.
- (c) AIL Confidential Information shall not be utilized by Contractor for any purpose other than that of performing its obligations hereunder.

16.3 CONFIDENTIALITY.

- (a) Confidential Information. Contractor and AIL each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other Party which such Party considers to be confidential, proprietary, a trade secret or otherwise restricted. As used in this Agreement and subject to Subsection (c)(i) of this Section, "Confidential Information" means all information, in any form, furnished or made available directly or indirectly by one Party to the other, including such information developed by either Party hereunder and used in or with the Terminals, which is marked confidential, restricted, proprietary, or with a similar designation, including all AIL Background Information, AIL Foreground Information, Contractor Background Information and Contractor Foreground Information. Confidential Information also shall include, whether or not designated "Confidential Information", (i) all specifications, designs, documents, correspondence, software, documentation, Source Code, Escrowed Materials, data and other materials and work products produced by either Contractor or its Subcontractors in the course of performance of this Agreement, (ii) all information concerning the operations, affairs and businesses of a Party, the financial affairs of a Party, and the relations of a Party with its customers, employees and service providers (including customer lists, customer information, account information and consumer markets), (iii) software provided to a Party by or through the other Party; and (iv) other information, systems designs and architecture, and data stored on magnetic media or otherwise or communicated orally by either Party, which a reasonable person would assume to be confidential, and obtained, received, transmitted, processed, stored, archived, or maintained by the other Party under this Agreement.
- (b) Obligations.
- (i) Each Party's Confidential Information shall remain the property of that Party or its licensors except as expressly provided otherwise by the other provisions of this Agreement. AIL and Contractor shall each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own information of a similar nature; provided that the Parties may disclose such Confidential Information to entities performing services required hereunder including subcontractors, suppliers or agents where (i) use of such entity is permitted to be used under this Agreement, (ii) such disclosure is necessary or otherwise naturally occurs in that entity's scope of responsibility, and (iii) the entity agrees in writing to assume the obligations described in this Section 16.3.
- (ii) As requested by AIL during the Term and upon expiration or any termination of this Agreement (in whole or in part) and completion of Contractor's obligations under this Agreement subject to Contractor's continuing need to fulfill its obligations hereunder, Contractor shall return or destroy, as AIL may direct in writing, all material in any medium that contains, refers to, or relates to AIL Confidential Information, and retain no copies. Contractor shall certify to AIL in writing that it has complied with the spirit and the letter of this Subsection.
- (iii) Each Party shall take reasonable steps to ensure that its employees comply with this Section 16.3.

- (iv) In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party shall notify the furnishing Party promptly upon becoming aware thereof.

(c) Exclusions.

- (i) "Confidential Information" shall exclude any particular information which Contractor or AIL can demonstrate (1) was, at the time of disclosure to it, in the public domain; (2) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (3) was in the possession of the receiving Party at the time of disclosure to it; (4) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or (5) was independently developed by the receiving Party without reference to Confidential Information of the furnishing Party. In addition, a Party shall not be considered to have breached its obligations by disclosing Confidential Information of the other Party as required to satisfy any legal requirement or regulations of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party promptly and prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

- (ii) Either Party may disclose the terms and conditions of this Agreement to third parties that (1) have expressed a bona fide interest in consummating a significant financing, merger or acquisition transaction between such third parties and the disclosing Party, (2) have a reasonable ability (financial and otherwise) to consummate such transaction, and (3) have executed a nondisclosure agreement that includes within its scope the terms and conditions of this Agreement. Each Party shall endeavor to delay the disclosure of the terms and conditions of this Agreement until the status of discussions concerning such transaction warrants such disclosure. In addition, either Party may disclose the terms and conditions of this Agreement to its subcontractors, suppliers and agents under confidentiality obligations having a need to know.

- (d) Loss of Confidential Information. In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party shall promptly, at its own expense: (i) notify the furnishing Party in writing; (ii) take such actions as may be necessary or reasonably requested by the furnishing Party to minimize the violation; and (iii) cooperate in all reasonable respects with the furnishing Party to minimize the violation and any damage resulting therefrom.

- (e) No Implied Rights. Nothing contained in this Section shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party.

17. EXAMINATION AND AUDIT OF INFORMATION; RECORDKEEPING

17.1 EXAMINATION AND AUDIT RIGHTS.

Contractor grants AIL the right to review, examine and/or audit Contractor's and Subcontractors' business and financial information relating to this Agreement as necessary to verify Contractor's performance hereunder, including manufacturing operations, quality control, production capacity and capability, failure rates, repairs and replacements, and responsiveness and/or costs and expenses of termination or changes hereunder, and AIL may employ, at AIL's expense, a mutually agreed-upon major accounting firm to conduct any review, examination or audit of costs and expenses. If a review, examination or audit of financial information reveals overcharges in excess of * * *, Contractor shall pay the costs and expenses of the review, examination or audit.

17.2 RECORDKEEPING OBLIGATIONS.

Contractor shall maintain complete and accurate records of and supporting documentation for all invoices submitted by Contractor under this Agreement, for out-of-pocket expenses or if AIL has agreed to pay Contractor and for hours expended for services billable on a rated basis to AIL, in accordance with generally accepted accounting principles applied on a consistent basis. Except for costs associated with expenses AIL has agreed to reimburse Contractor on an out-of-pocket expense basis, AIL will not be entitled to audit Contractor's cost information concerning the cost to produce the Terminals and Services provided under this Agreement. Contractor agrees to provide AIL with documentation and other information with respect to each such invoice as may be reasonably requested by AIL to verify accuracy and compliance with the provisions of this Agreement. Upon AIL's reasonable request, AIL and its authorized agents and representatives shall have access to such business and financial records for purposes of review, examination and/or audit during normal business hours during the Term and for a period of three (3) years after termination of this Agreement. In the event any overpayment is made by AIL under this Agreement, either discovered during a review, examination, audit or otherwise, Contractor shall promptly pay AIL the amount of such overcharge, along with interest at Prime Rate from the date such payments were originally made.

18. REPRESENTATIONS AND WARRANTIES

18.1 PASS-THROUGH WARRANTIES.

Contractor will from time to time provide certain Terminal components, Equipment, Software and other items for which Contractor is entitled to warranties from the manufacturers, lessors or licensors of such items. Contractor shall pass through to AIL, its Service Providers and Users that purchase Terminals, Equipment or Software the benefits of such warranties to the extent that Contractor is able pursuant to any agreements between Contractor and such manufacturers, lessors or licensors.

18.2 WORK STANDARDS.

Contractor warrants that the Services shall be rendered with promptness and diligence and shall be executed in a workmanlike manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services. Contractor also warrants that it shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services.

18.3 TERMINAL AND SERVICES WARRANTIES.

"Warranty Period" means * * * from the earlier to occur of (i) the date of acceptance of delivery of any production Terminal by AIL or its Service Providers or (ii) * * * from the date of shipment to any User. AIL, Service Providers or Users may extend the Warranty Period one or more times in their respective sole discretion, for additional consecutive one-year periods each without lapse, upon payment of the Extended Warranty fee set forth in Schedule 15 (the aggregate of such extensions the "Extended Warranty Period"). In addition, Contractor shall offer an Extended Warranty to Users that have allowed a prior Warranty Period or Extended Warranty Period to lapse, upon payment by such User of a commercially reasonable fee. Contractor's procedures for obtaining Warranty services are set forth in Schedule 16 attached hereto. Contractor warrants to AIL as follows and AIL may incorporate such warranties into its agreements with Service Providers and Users to which AIL supplies Terminals, with AIL as the warranting party. Contractor will include with each Terminal shipped to AIL appropriate documentation that sets forth Contractor's warranty policy to Users.

- (a) Contractor warrants that Terminals provided under this Agreement shall be free from defects in material and workmanship, and shall operate in accordance with the SOW, Documentation and applicable Standards (in effect for that Terminal configuration at the time of delivery) upon delivery and during the Warranty Period and any Extended Warranty Period. Contractor further warrants that Terminals provided hereunder shall be free of any defect in design that results in non-conformance of a Terminal to the SOW and applicable Standards in effect for that Terminal configuration at the time of delivery. Contractor further warrants that the Terminals are built in accordance with the applicable requirements set forth in the SOW.
- (b) Contractor represents, warrants and covenants that all Terminal components provided hereunder shall be new, not refurbished or re-manufactured. Notwithstanding the foregoing, Contractor may use refurbished or re-manufactured parts for warranty repair or replacement actions.
- (c) Contractor warrants that it shall maintain the Terminals such that the Terminals conform to the SOW during the Warranty Period and Extended Warranty Period. Such maintenance shall include:
 - (i) in accordance with the procedures set forth in Schedule 16, perform repairs on Terminals, including any repairs required by third party manufacturers and any repairs recommended by third party manufacturers and required for the intended operation of the Terminals;
 - (ii) providing any modification or enhancements that are necessary to maintain the Terminals in compliance with applicable Standards, as well as Documentation related to such enhancements;
 - (iii) providing any release, update, alteration, modification, enhancement or improvement that is generally available to Contractor's other customers under warranty or extended warranty;
 - (iv) providing code corrections or maintenance patches (including, all bug fixes, error correction, revisions, modifications, and maintenance recommended by third party vendors) will be supplied to correct a Defect in order to bring the

Software into conformance with the SOW. Contractor shall also replace the Software if the media is destroyed or damaged unless and to the extent the damage is on account of AIL's or its Service Providers' or Users' improper use (which shall not be improper use if used in accordance with the documentation or as instructed by Contractor's) and as a result such Software are unusable or fail to operate in accordance with the SOW;

- (v) providing all improvements, enhancements, extensions, upgrades and other changes to the Software that are released by the Contractor. Contractor shall concurrently provide updated Documentation reflecting such changes. Contractor shall also supply, when necessary, updated Software required to cause the Software to operate with upgraded Terminals (including engineering changes) or under new versions or releases of the operating system or other system software designed for the Software;
- (vi) providing telephone support to AIL and its Service Providers and Users, at no charge during the Warranty Period and Extended Warranty Period, in order to assist such parties to locate and correct functional or operational problems with the Terminals. Such support shall be provided on a 24 hour, 7 days per week, 365 days per year basis via Contractor help desk. Contractor's technical engineering support is available 8:00 a.m. to 8:00 p.m. EST during normal business days at the rates set forth in Schedule 14. In addition, Contractor's technical engineering support is available on a 24 hour, 7 days per week, 365 days per year basis for major problems as determined by AIL at the rates set forth in Schedule 14. Contractor shall provide a single contact number for AIL, its Service Providers and Users to report problems;
- (vii) in the event of problems that cannot be corrected with telephone support or on a remote basis within the applicable Performance Standards, Contractor shall provide on-site assistance at its then-current commercial rates. However, if the problem is due to AIL's acts or omissions and on-site assistance is required, Contractor's personnel rates set forth in Schedule 14 will apply;
- (viii) during the Warranty Period or any Extended Warranty Period, if Contractor is required under the Agreement to repair a particular ODU or IDU more than * * * times in any rolling * * * period, Contractor shall replace such ODU or IDU, as the case may be, in its entirety at no charge; provided, however, if any Service Provider or User would require more than * * * repairs in the aggregate on a particular Terminal (IDU and ODU) in any rolling * * * period, Contractor shall replace the entire Terminal at no charge;
- (ix) in the event AIL, a Service Provider or User receives a Terminal that is Dead on Arrival, promptly replace such Terminal; and
- (x) in the event that any ODU or IDU is determined to have a "Pattern Defect" during the Warranty Period, Contractor will promptly modify the design, material and/or manufacturing process such that the Pattern Defect is eliminated, and Contractor shall deliver, at its expense, replacements for all affected ODU or IDU, as the case may be, or parts thereof to eliminate such Pattern Defect. A "Pattern Defect" will be determined to exist in any ODU or IDU when * * * or more of the total number of Terminals (IDUs and ODUs) (for any Terminal

configuration or in the aggregate) shipped during any rolling * * * period fails, due to the same defect in design, material and/or manufacturing process carried out by Contractor or its Subcontractors. This warranty shall be effective for the Term (as it may be extended or renewed), starting at first shipment and ending upon the later of the end of the Warranty Period or Extended Warranty Period (if any) for each Terminal delivered.

- (d) Contractor represents and warrants that it shall offer to AIL, Service Providers and Users the post-warranty support and repair services set forth in Schedule 17 attached hereto and maintain the availability of Terminal parts and sub-parts, consistent with the Terminal redundancy design, for a period of the later of (i) expiration of all applicable Extended Warranty Periods plus five years and (ii) seven years following the last delivery of Terminals under this Agreement. Subject to the foregoing support periods, Contractor shall provide to AIL written notification at least six (6) months prior to the discontinuation of manufacture of any Terminal components associated with this Agreement to permit AIL a last time purchase opportunity; provided, however, during the Term, as long as Contractor continues to manufacture Terminals, Contractor shall not discontinue any Terminal component if no replacement exists that will permit the Terminals to continue to meet or exceed the SOW. Contractor acknowledges and agrees that it shall not utilize this "discontinuation" provision as a means to cease supplying Terminals during the Term.
- (e) For a period of * * * years following delivery of the initial production unit of the * * * Terminal, Contractor warrants that it shall stock spare Terminal and Equipment parts in accordance with the SOW's Product Support Plan. Periodically, the Parties will meet to review Contractor's spare parts inventory levels.
- (f) Contractor warrants that all Terminals, including all updates, upgrades and revisions to Terminals and/or Software, shall be backward compatible to existing production Terminals or prior releases so that all applications and other items that can be used in connection with a Terminal at any time can be used in connection with future Terminals in materially the same manner and with materially equivalent performance. In addition, all updates, upgrades and revisions to Terminals and/or Software, shall be fully integrated, compatible and operational with the AIL System, and shall be built in accordance with the applicable Standards. In no event shall AIL be required to upgrade its Software if such upgrade requires a corresponding Terminal upgrade. In such event, Contractor shall continue to support the release of the Software that did not require a corresponding Terminal upgrade as set forth in this Agreement. Terminal upgrades to implement Software enhancements or improvements that AIL desires to implement shall be provided to AIL at mutually agreed upon rates.
- (g) Contractor warrants, to its actual knowledge, that the Terminals, the Services and the other deliverables provided by Contractor to AIL hereunder do not and shall not infringe upon any third party Intellectual Property Rights.
- (h) Contractor shall provide access to appropriate technical resources to AIL's appropriate personnel in order to resolve any problem that AIL cannot resolve through lower level support, including help desk support and field service support for errors that cannot be remotely diagnosed and cured in accordance with Section 18.3(c)(vi) or, following the applicable Warranty Period or Extended Warranty Period, if any, in accordance with Schedule 17.

- (i) In the event of a breach of the foregoing representations, warranties and covenants during the Warranty Period or an Extended Warranty Period, and upon written notice from AIL describing the breach, Contractor shall at no charge to AIL: (i) in the case of Terminals, repair or replace, at Contractor's discretion, such Terminals so that they are compliant with the warranty within the time period specified as part of the Performance Standards, and (ii) in the case of Services, immediately re-perform the Services. In the event Contractor fails to repair or replace such Terminals or to perform such Services, AIL reasonably may do so at Contractor's expense.
- (j) The foregoing representations and warranties will not apply if and to the extent, and so long as not caused by Contractor or its Subcontractors or agents where:
- (i) defects in Terminals delivered hereunder or infringement of any third party Intellectual Property Right are caused by alteration, modification, or repair by any person other than Contractor or its Subcontractors or agents or due to an act of God; provided, however, the foregoing exclusion shall not apply with respect to AIL or AIL's subcontractors' making of minor changes or if an alteration, modification or repair is authorized by the Documentation and performed in accordance with such Documentation or otherwise by Contractor or its Subcontractors or agents in writing;
 - (ii) defects are caused by AIL or AIL's suppliers or subcontractors mishandling or abuse, excluding specifically Contractor, its Affiliates and their suppliers and Subcontractors;
 - (iii) defects are caused from improper operation, interconnection or installation by any person other than Contractor or its Subcontractors; or
 - (iv) infringement of any third party Intellectual Property Right is caused by the combination of a Terminal or the Software and technology or software of any other party, other than software or technology provided or required by Contractor for use of the Terminals and the AIL System, where no infringement would have occurred without such combination, unless (i) AIL did not have actual knowledge of such infringement, (ii) Contractor had actual knowledge of such infringement and (iii) Contractor failed to disclose the infringement to AIL.

18.4 DOCUMENTATION.

Contractor warrants that all Documentation provided by Contractor shall be accurate, complete and written in a manner specified in the SOW.

18.5 EFFICIENCY AND COST EFFECTIVENESS.

Contractor warrants that it shall use its reasonable efforts to use efficiently the resources or services necessary to provide the Terminals and the Services. Contractor warrants that it shall use its reasonable efforts to perform the Services and develop, manufacture and deliver the Terminals in the most cost-effective manner consistent with the required level of quality and performance.

18.6 INDUCEMENTS.

Neither Party has offered or provided, nor will it offer or provide, any inducements in violation of law, including the Foreign Corrupt Practices Act or other corrupt practices laws, or of any written AIL policy provided to Contractor in connection with this Agreement.

18.7 OWNERSHIP OR USE.

- (a) Contractor represents, warrants and covenants that it is either the owner of, or authorized to distribute, sublicense and use, the Contractor Confidential Information as provided herein.
- (b) Contractor represents, warrants and covenants that AIL shall receive marketable title to all Terminals provided pursuant to this Agreement and shall be entitled to the rights of possession and quiet enjoyment thereto, free of any Liens, except to the extent otherwise expressly provided by this Agreement.

18.8 AUTHORIZATION.

Each Party represents and warrants to the other that:

- (a) it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
- (b) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party; and
- (c) is not subject to any contractual or other obligation that would prevent it from entering into this Agreement.

18.9 VIRUSES.

Contractor warrants that no Viruses are coded or introduced into any Terminal. If a Virus is found in a Terminal, Contractor, at no additional charge to AIL, any Service Provider or User, shall remove such Virus and use its best efforts to assist AIL in reducing the effects of the Virus and, if the Virus causes a loss of operational efficiency or loss of data, to assist AIL to the same extent to mitigate and restore such losses.

18.10 DISABLING CODE.

Contractor warrants that no code, device or routine (including, without limitation, time bombs, back doors or drop dead devices) that would have the effect of disabling or otherwise shutting down all or any portion of a Terminal are coded or introduced into any Terminal at the time the Terminal is delivered by Contractor ("Disabling Code"), unless AIL authorizes Contractor to include any such code. If any such unauthorized Disabling Code is found in a Terminal, Contractor, at no additional charge to AIL, any Service Provider or User, shall remove such Disabling Code and use its best efforts to assist AIL in reducing the effects of the Disabling Code and, if the Disabling Code causes a loss of operational efficiency or loss of data, to assist AIL to the same extent to mitigate and restore such losses. Contractor shall not invoke any Disabling Code at any time, including upon expiration or termination of this Agreement (in whole or in part) for any reason, without AIL's prior written consent.

18.11 YEAR 2000.

Contractor represents and warrants that the Terminals are Year 2000 Compliant.

18.12 DISCLAIMER.

EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

19. INSURANCE

Contractor shall during the Term have and maintain in force the following insurance coverages:

- (a) Worker's compensation insurance (including occupational illness or disease coverage, or other similar social insurance in accordance with the law of the state exercising jurisdiction over the employee), and employer's liability insurance with a minimum limit of the higher of (i) * * * per occurrence, and (ii) any amount required by law.
- (b) Automotive Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of * * * per occurrence for bodily injury and property damage liability. This policy shall be endorsed to name AIL as additional insured.
- (c) Commercial general liability insurance, including products, completed operations liability and personal injury, contractual liability and broad form property damage liability coverage for damages to any property with a minimum combined single limit of * * * per occurrence.
- (d) All Risk Property Insurance (with AIL as loss payee as its interests appear) on equipment, data, media and valuable papers, including extra expense coverage, with a minimum limit adequate to cover such risks on a replacement cost basis.
- (e) Umbrella Liability Insurance with a minimum limit of * * * in excess of the insurance under policies indicated in Subsections (a), (b) and (c).
- (f) Professional liability, errors and omissions insurance.

The foregoing insurance coverages shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by AIL, and shall be endorsed to AIL as an additional insured with the exception of Subsection 19(f) above and Workers Compensation. Contractor shall cause its insurers to issue certificates of insurance evidencing that the coverages and policy endorsements required under this Agreement are maintained in force and that not less than thirty (30) days written notice shall be given to AIL prior to any modification, cancellation or non-renewal of the policies. The insurers selected by Contractor shall have an A.M. Best rating of A-XII or better or, if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency.

20. INDEMNITIES

20.1 INDEMNITY BY CONTRACTOR.

Contractor shall indemnify, defend and hold harmless AIL and its affiliates and their respective officers, directors, employees, agents, successors, and assigns from any and all Losses arising out of any of the following:

- (a) third party claims arising out of Contractor's performance hereunder, including breach of this Agreement;
- (b) third party claims arising out of Contractor's failure to observe or perform any duties or obligations to third parties, including its Subcontractors;
- (c) third party claims arising out of the manufacture, distribution, or intended use of Terminals, due to Contractor's negligence or willful misconduct;
- (d) third party claims (including claims by any employee, agent, customer, business invitee or business visitor or other person) for death or personal injury caused by the tortious conduct of Contractor or its Affiliates;
- (e) claims for damage to real or tangible property caused by the tortious conduct of Contractor or its Affiliates;
- (f) Contractor's breach of its obligations with respect to AIL Confidential Information;
- (g) third party claims for infringement of Contractor's Intellectual Property Rights;
- (h) governmental claims arising out of Contractor's failure to comply with applicable law or to obtain those permits it is required to obtain under the Contract;
- (i) any claim, demand, charge, action, cause of action, or other proceeding asserted against the indemnitee but resulting from an act or omission of the indemnitor in its capacity as an employer of a person.

20.2 INDEMNITY BY AIL.

AIL agrees to indemnify, defend and hold harmless Contractor and its Affiliates and their respective officers, directors, employees, agents, successors, and assigns, from any and all Losses from claims arising from, in connection with, or based on allegations of any of the following:

- (a) third party claims arising out of AIL's performance hereunder, including breach of this Agreement;
- (b) third party claims arising out of AIL's failure to observe or perform any duties or obligations to third parties;
- (c) third party claims arising out of AIL's breach of its obligations with respect to Contractor Confidential Information;
- (d) third party claims (including claims by any employee, agent, customer, business invitee or business visitor or other person) for death or personal injury caused by the tortious conduct of AIL or its Affiliates;

- (e) claims for damage, loss or destruction of any real or tangible personal property caused by tortious conduct of AIL or its Affiliates;
- (f) third party claims for infringement of AIL's Intellectual Property Rights;
- (g) any claim, demand, charge, action, cause of action, or other proceeding asserted against the indemnitee but resulting from an act or omission of the indemnitor in its capacity as an employer of a person; and
- (h) claims of infringement of third party Intellectual Property Rights, alleged to have occurred because of AIL-furnished equipment or components, if any, or other resources provided by AIL directly to Contractor for incorporation into the Terminals.

20.3 INFRINGEMENT.

If any item used by Contractor to provide the Terminals or Services becomes, or in Contractor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, in addition to indemnifying AIL as provided in this Article 20 and to the other rights AIL may have under this Agreement, Contractor shall, promptly at Contractor's expense:

- (a) secure the right to continue using the item; or
- (b) if the action described in Subsection (a) cannot be accomplished by Contractor, replace or modify the item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected Terminals or Services; or
- (c) if the action described in Subsection (b) of this Section cannot be accomplished by Contractor, and only in such event, provide AIL with a refund equal to the lesser of (A) AIL's cover costs and expenses to replace the affected Terminals or Services and (B) the total amounts paid hereunder for the affected Services and Terminals, less reasonable depreciation. With respect to Terminals, such payment shall be made contemporaneously with AIL's return of the affected Terminals or, if otherwise directed by court order, removal from AIL's network.

20.4 INDEMNIFICATION PROCEDURES.

With respect to third party claims, the following procedures shall apply:

- (a) Notice. Promptly after receipt by any entity entitled to indemnification under Sections 20.1 through 20.3 of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to any such Section, the indemnitee shall notify the indemnitor of such claim in writing. No failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the indemnitee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee in writing if the indemnitor elects to assume control of the defense and settlement of that claim (a "Notice of Election").

- (b) Procedure Following Notice of Election. If the indemnitor delivers a Notice of Election relating to any claim within the required notice period, the indemnitor shall be entitled to have sole control over the defense and settlement of such claim; provided that (i) the indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the indemnitor has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph, the indemnitor shall not be liable to the indemnitee for any legal expenses incurred by the indemnitee in connection with the defense of that claim. In addition, the indemnitor shall not be required to indemnify the indemnitee for any amount paid or payable by the indemnitee in the settlement of any claim for which the indemnitor has delivered a timely Notice of Election if such amount was agreed to without the written consent of the indemnitor.
- (c) Procedure Where No Notice of Election Is Delivered. If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend and/or settle the claim in such manner as it may deem appropriate, at the cost and expense of the indemnitor. The indemnitor shall promptly reimburse the indemnitee for all such Losses.

20.5 SUBROGATION.

In the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to Sections 20.1 through 20.3, the indemnitor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

21. LIABILITY

21.1 GENERAL INTENT.

Subject to the specific provisions of this Article 21, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

21.2 LIABILITY RESTRICTIONS.

- (a) SUBJECT TO SUBSECTIONS (b), (c) AND (d) OF THIS SECTION, IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, AND STRICT LIABILITY IN TORT), SHALL A PARTY BE LIABLE FOR INDIRECT OR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
- (b) The limitations set forth in:
- (i) Subsection (a) of this Section shall not apply with respect to claims and damages occasioned by improper or wrongful termination of this Agreement by

Contractor or improper or wrongful abandonment of the work by Contractor under this Agreement; and

(ii) Subsection (a) of this Section shall not apply with respect to claims and damages with respect to (1) claims that are the subject of indemnification pursuant to Article 20, (2) willful misconduct, or (3) any breach of Article 16 hereof.

(c) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HEREUNDER, UNDER ANY THEORY OF LIABILITY EXCEPT WILLFUL MISCONDUCT, FOR LOSSES, CLAIMS, DAMAGES, COSTS AND EXPENSES IN THE AGGREGATE THAT EXCEED (i) IN THE CASE OF CONTRACTOR'S LIABILITY, THE AGGREGATE AMOUNTS PAID BY AIL TO CONTRACTOR HEREUNDER, AND (ii) IN THE CASE OF AIL'S LIABILITY, THE AGGREGATE AMOUNTS PAID BY AIL, AND UNPAID AMOUNTS WHICH ARE DUE AND OWING FROM AIL, TO CONTRACTOR HEREUNDER.

(d) Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which the other Party is responsible.

21.3 FORCE MAJEURE.

(a) No Party shall be liable for any failure or delay in the performance of its obligations under this Agreement if and to the extent it is caused by fire, flood, lightning, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country, or any other cause beyond the reasonable control of such Party, including import/export issues; provided, however, that the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (any of the foregoing, a "Force Majeure Event").

(b) In such event the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) business days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

(c) If any Force Majeure Event substantially prevents, hinders, or delays Contractor's performance for more than sixty (60) consecutive days, then at AIL's option, AIL may terminate or modify any affected portion of any Order, or terminate any affected portion of this Agreement, and the charges payable hereunder shall be appropriately adjusted to reflect such termination. Further, if any Force Majeure Event substantially prevents, hinders, or delays Contractor's performance for more than one hundred fifty (150) consecutive days, then at AIL's option, AIL may terminate this Agreement without liability to AIL or Contractor as of a date specified by AIL in a written notice of termination to Contractor. Neither Party shall have the right to any additional payments from the other Party for costs or expenses incurred by the other Party as a result of any Force Majeure Event.

- (d) Notwithstanding the foregoing Subsections in this Section 21.3, if the U.S. Federal Communications Commission or other U.S. or foreign regulatory or governing body rescinds or otherwise invalidates AIL's communications license or fails to issue such license in due course, which substantially impairs the economic viability of AIL (any of the foregoing, a "Regulatory Force Majeure Event"), the Parties agree to renegotiate this Agreement on commercially reasonable and mutually acceptable terms in light of the effects arising from the Regulatory Force Majeure Event, to the extent such Regulatory Force Majeure is not caused by the gross negligence or willful misconduct of AIL.

21.4 EXCUSABLE DELAY.

Either (i) the occurrence of a Force Majeure Event that prevents Contractor from performing its obligations hereunder, or (ii) the material adverse effect to Contractor's ability to timely perform its obligations hereunder caused by AIL's failure to timely meet its obligations hereunder following the applicable cure period after written notice is received by AIL describing AIL's failure, shall constitute "Excusable Delay" hereunder. In the event of Excusable Delay, Contractor may stop work until Contractor can resume performance following the Force Majeure Event in accordance with Section 21.3 hereof or AIL resumes or cures performance, as the case may be. In addition, Contractor shall be entitled to an appropriate adjustment in the Milestone Dates or applicable production schedule for any Excusable Delay and, in the event of an Excusable Delay caused by AIL's failure to perform its obligations hereunder, an appropriate price adjustment as mutually agreed by the Parties. Price adjustments shall account only for the net non-recurring, production and other related cost impact incurred by Contractor as a result of the change plus a reasonable profit thereon not to exceed * * *. Contractor will provide reasonably detailed back-up price data to support its claim for such adjustment.

22. DISPUTE RESOLUTION

Any dispute between the Parties arising out of or relating to this Agreement, including with respect to the interpretation of any provision of this Agreement and with respect to the performance by Contractor or AIL, shall be resolved as provided in this Article 22. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to, and hereby waives, the right to enjoin AIL's use of IP on the AIL System, even if Contractor believes AIL is using Contractor's IP in violation of the terms of this Agreement. In such case, Contractor, at its election, shall be entitled to royalties on commercially reasonable terms pursuant to a license agreed to by the parties on by an arbitrator in the event the parties are unable to agree upon the terms of such license in addition to all damages and remedies available to Contractor at law, equity or otherwise, subject to Contractor's waiver of its right to seek an injunction as provided herein.

22.1 INFORMAL DISPUTE RESOLUTION.

Subject to Subsection 22.3, prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally pursuant to this Section 22.1. Upon the written request of a Party, each Party shall appoint a designated representative who does not devote substantially all of his or her time to performance under this Agreement, whose task it will be to meet for the purpose of endeavoring to resolve such dispute.

- (a) The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection

with its resolution. The representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding.

- (b) During the course of discussion, all reasonable requests made by one Party to another for nonprivileged information, reasonably related to this Agreement, shall be honored in order that each of the Parties may be fully advised of the other's position.
- (c) The specific format for the discussions shall be left to the discretion of the designated representatives.
- (d) If the designated representatives fail to resolve the dispute, the Parties agree to escalate the dispute resolution process to a higher executive level, and then to the CEO level. Each level of informal dispute resolution will be allowed no more than fifteen (15) days, unless otherwise mutually agreed by the Parties.

22.2 ARBITRATION.

Subject to Subsection 22.3, if the Parties fail to resolve a dispute pursuant to Section 22.1 above, the Parties agree to pursue binding arbitration as the sole remedy of any dispute hereunder. Each Party shall designate one arbitrator, provided that the arbitrator(s) selected shall be knowledgeable in the telecommunications field. The two designated arbitrators shall then choose a third arbitrator, who shall be the head of the panel of arbitrators, and the panel of three arbitrators shall hear and resolve the dispute. The rules and regulations to be followed shall be those of the Center for Public Resources, or its successor, in effect on the date of delivery of the demand for arbitration. The Parties expressly agree that the arbitrators shall have the authority to issue appropriate relief; provided, however, that the arbitrators shall not have the power to issue punitive or other special or exemplary damages. The decision of the arbitrators shall be final and binding on both Parties and their respective successors and permitted assigns, and such decision may be enforced by any court having jurisdiction over the Party against whom the award is rendered. Each Party shall pay the fees of its own attorneys, experts and the expenses of its witnesses. All other costs and expenses of the arbitration, including the costs and expenses of recording the transcripts thereof, if any, administration fees and all other fees, costs and expenses, shall be borne equally by the Parties. All arbitration proceedings will be conducted in Washington, D.C. Contractor agrees to be joined in any other arbitration or proceeding involving another entity under contract to AIL or Contractor relating to the AIL System where performance of Contractor under this Agreement or of the Terminals is at issue so as to resolve any disputes efficiently. If joined in any such arbitration or proceeding, Contractor hereby agrees to be subject to the decisions of the arbitrator(s) already chosen by the original parties to such arbitration or proceeding, and Contractor hereby waives its right to choose an arbitrator as provided herein.

22.3 INJUNCTIVE RELIEF.

Notwithstanding Subsections 22.1 or 22.2, AIL may obtain preliminary or temporary injunctive relief, including specific performance, or relief in and of arbitration at any time from a court of competent jurisdiction where immediate irreparable harm to the AIL System or AIL's business is threatened by Contractor's acts or omissions, but requests for permanent injunctive relief shall be arbitrated pursuant to Section 22.2.

22.4 CONTINUED PERFORMANCE.

Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance but a failure to pay undisputed amounts after notice and an opportunity to cure as provided in Subsection 23.1(b) shall permit discontinuance of Contractor's performance obligations solely with respect to the payment failure).

22.5 VENUE AND JURISDICTION.

Each Party consents to the personal jurisdiction and venue of the Montgomery County Circuit Court, Montgomery County, Maryland, or the United States District Court for the District of Maryland, Greenbelt Division, in the event of any dispute between the Parties arising out of or relating to this Agreement that is permitted under this Article 22 to be resolved by litigation or in the enforcement of any award granted pursuant to this Article 22, and each Party agrees that it shall file any suit against the other Party only in such courts.

23. TERMINATION

23.1 TERMINATION FOR CAUSE.

(a) In the event that Contractor:

(i) commits a material breach of this Agreement, including:

- (1) failure to make any undisputed payment to AIL;
- (2) failure to achieve a Milestone after written notice;
- (3) failure to complete a Milestone or other agreed-upon material task within the corresponding Milestone Date or agreed-upon timeframe; or
- (4) failure to complete any of its material obligations hereunder within pre-agreed timeframes;

which breach is not cured within thirty (30) days after written notice of breach from AIL to Contractor, unless such breach is not capable of being cured within thirty (30) days;

(ii) commits a material breach of this Agreement which is not capable of being cured within thirty (30) days and fails to (i) proceed promptly and diligently to correct the breach, (ii) develop within thirty (30) days following written notice of breach from AIL a complete plan for curing the breach (which plan and cure period shall be reviewed by AIL and mutually agreed upon by the Parties), and (iii) cure the breach within the applicable cure period set forth in the plan;

(iii) commits three breaches of its duties or obligations of the same type, which taken together would constitute a material breach hereof, within any twelve (12) month period for which Contractor has received written notice from AIL and thirty (30) days following receipt of such notice to cure such breaches, and Contractor has failed to cure all such breaches; or

- (iv) ceases to carry on its business; a receiver or similar officer is appointed for Contractor and is not discharged within thirty (30) days; admits in writing its inability to pay debts as they mature, is adjudicated bankrupt, or makes an assignment for the benefit of its creditors or another arrangement of similar import; or proceedings under bankruptcy or insolvency laws are commenced by or against Contractor and are not dismissed within sixty (60) days;

then AIL may, by giving written notice to Contractor, terminate this Agreement, in whole or in part, as of a date specified in the notice of termination. If AIL chooses to terminate this Agreement in part, the charges payable under this Agreement will be appropriately adjusted to reflect those services that are terminated. Any of the foregoing reasons for which AIL may terminate this Agreement shall be referred to as "Cause".

(b) In the event that AIL:

- (i) fails to pay Contractor when due undisputed charges under the Agreement and fails to make such payment within thirty (30) days of written notice from Contractor of the failure to make such payment; or
- (ii) ceases to carry on its business; a receiver or similar officer is appointed for AIL and is not discharged within thirty (30) days; admits in writing its inability to pay debts as they mature, is adjudicated bankrupt, or makes an assignment for the benefit of its creditors or another arrangement of similar import; or proceedings under bankruptcy or insolvency laws are commenced by or against AIL and are not dismissed within sixty (60) days;

Contractor may, by giving written notice to AIL, terminate this Agreement as of a date specified in such notice of termination and any such reason for termination shall be referred to as "Cause".

23.2 TERMINATION FOR CONVENIENCE.

- (a) AIL may terminate this Agreement, in whole or in part, for convenience and without cause at any time by giving Contractor thirty (30) days prior written notice designating the date of termination (the "Termination Date").
- (b) If AIL elects to terminate this Agreement for convenience in accordance with this Section 23.2 prior to the delivery of and payment for all Seed Order Terminals as set forth in Schedule 18 (scheduled as of the Effective Date for * * *) (the "Development Phase Liability Date"), AIL agrees to pay Contractor a termination liability payment in accordance with Schedule 5 less all amounts paid by AIL to Contractor hereunder to up and including the Development Phase Liability Date. This Subsection (b) shall be of no further effect after the Development Phase Liability Date. Notwithstanding anything herein to the contrary, AIL's maximum liability and Contractor's sole remedy for termination for convenience through the Development Phase Liability Date shall be no greater than * * *.
- (c) If AIL elects to terminate this Agreement for convenience in accordance with this Section 23.2 following the Development Phase Liability Date, as soon as practicable following the Termination Date, Contractor shall provide AIL with a complete statement of all unpaid amounts due and owing for work performed hereunder and other amounts

that are due to Contractor hereunder as of the Termination Date, including all cancellation fees, if any, set forth in Section 8.5 and 8.8 above (the "Final Statement"). AIL shall review the Final Statement within thirty (30) days of receipt thereof and, if reasonably satisfactory to AIL, shall pay Contractor within thirty (30) days of approval all or part of the Final Statement, all undisputed amounts due thereunder. If AIL disputes any amounts set forth in the Final Statement, the Parties shall resolve such disputes as provided herein, and following resolution of such disputes, AIL shall pay Contractor all remaining undisputed amounts, if any, within thirty (30) days after resolution of such disputes. In the event that a purported termination for cause by AIL under Section 23.1 is determined by a competent authority not to be properly a termination for cause, then such termination shall be deemed to be a termination for convenience by AIL under this Section 23.2.

23.3 EFFECT OF TERMINATION FOR CAUSE.

- (a) If (i) during the Co-Exclusivity Period AIL terminates this Agreement for Cause, or (ii) Contractor's Co-Exclusivity Right is terminated as provided herein, or (iii) AIL terminates this Agreement pursuant to Section 6.8 or Section 14.1 hereof, to the extent that AIL reasonably determines that AIL's designated replacement vendor for Contractor (the "Replacement Vendor") is in need of any of Contractor's Confidential Information, Contractor Background Information and/or Contractor Foreground Information and the Intellectual Property Rights appurtenant thereto required to develop, produce, operate, market, demonstrate, distribute and sell the Terminals (collectively, the "Terminal IP"), Contractor shall provide such Terminal IP to the Replacement Vendor and shall license on commercially reasonable terms to AIL or the Replacement Vendor the Terminal IP on a non-exclusive, worldwide and irrevocable basis (during the sooner to occur of (i) the end of the Initial Term if Contractor had not defaulted or (ii) until the Replacement Vendor ceases to produce Terminals or Comparable Terminals), for use only in the development, production, marketing and sales of Terminals for the AIL System and otherwise as necessary or appropriate to fulfill Contractor's obligations hereunder as if Contractor had not defaulted hereunder; provided however, that the Parties' agreement on the terms of such license shall not be a condition precedent to, or delay in any way, AIL's right or the right of the Replacement Vendor to use the Terminal IP to develop, manufacture and produce Terminals. The scope of the license granted to the Replacement Vendor shall extend only to fulfill Contractor's obligations hereunder as if the Agreement had not been terminated. In addition, Contractor agrees to provide to AIL or AIL's authorized manufacturer the information and rights related to the Reduced-Cost Modules, as set forth in Section 5.8 above.
- (b) If AIL terminates this Agreement under Section 23.1(a) above, AIL shall be entitled to have the work completed by another party or parties, and Contractor shall be liable to AIL for * * *.

23.4 TERMINATION/EXPIRATION ASSISTANCE.

- (a) Upon termination of this Agreement pursuant to Section 23.1(a), Contractor shall, upon payment of all undisputed amounts due and payable to Contractor hereunder, turn over to AIL or its designee all pending and ongoing work, together with such license rights and Intellectual Property Rights relating to the work to the extent and in the manner to which AIL would have been entitled under this Agreement had there not been a termination, subject further to Section 23.3(a).

- (b) Commencing (6) months prior to expiration of this Agreement or on such earlier date as AIL may request, but no earlier than twelve (12) months prior to the expiration of this Agreement, or commencing upon any notice of termination (in whole or in part) or of non-renewal of this Agreement (including notice based upon default by AIL), and continuing for a period not to exceed two (2) years, Contractor shall provide to AIL, or at AIL's request to AIL's designee, reasonable termination/expiration assistance requested by AIL (at AIL's expense except if the termination results from Contractor's default) to allow the provisioning of the Terminals components thereof to continue without interruption or adverse effect to AIL's operations and business in connection with AIL's System ("Termination/Expiration Assistance"). Termination/Expiration Assistance shall include the following assistance:
- (i) Contractor shall, using its good faith efforts, migrate the support obligations hereunder to a qualified third party designated vendor;
 - (ii) Contractor shall to the extent authorized sublicense to AIL all third party products utilized with the Terminals subject to the use rights set forth in Section 10.6; provided, however, with respect to non-commercially available third party products utilized with the Terminals, if any, Contractor shall provide the foregoing sublicense to AIL; and
 - (iii) Contractor shall identify for AIL all third party suppliers Contractor utilized to manufacture the Terminals.
- (c) This Section 23.4 shall survive termination/expiration of this Agreement. For a period of two (2) years following the effective date of termination/expiration under other provisions of this Agreement, Contractor shall provide, at AIL's request, any or all of the Services being performed by Contractor prior to such effective date. To the extent Contractor is to perform Services under Subsection (a) of this Section 23.4, the provisions of this Agreement shall be applicable as such provisions would have been applicable to such Services prior to such effective date, provided the charge therefore shall at Contractor's then current commercial rates. In the event the Agreement is terminated by Contractor for AIL's non-payment in accordance with Section 23.1(b), then Contractor may request that AIL pay for such Services in advance based on a reasonable estimate for such Services as agreed upon by the Parties. Any overages or underages of such pre-payments will be accounted for at the end of the month.

23.5 APPROPRIATE REMEDIES.

Contractor acknowledges that, in the event it breaches (or attempts or threatens to breach) its obligation to provide Termination/Expiration Assistance as provided in Section 23.4, AIL will be irreparably harmed and AIL will not have an adequate remedy at law. In such a circumstance, AIL may proceed directly to court. If a court of competent jurisdiction should find that Contractor has breached (or attempted or threatened to breach) any such obligations, Contractor agrees that without any additional findings of irreparable injury, inadequate remedy at law or other conditions to injunctive relief, it shall not oppose the entry of an appropriate order compelling performance by Contractor and restraining it from any further breaches (or attempted or threatened breaches).

24. GENERAL

24.1 BINDING NATURE AND ASSIGNMENT.

This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may, or shall have the power to, assign this Agreement or delegate such Party's obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, that the proposed assignee has the resources (financial, technical, personnel, etc.) to perform the assignor's obligations hereunder. Notwithstanding the foregoing, AIL may assign its rights and obligations under this Agreement with the approval of Contractor (which approval shall not be unreasonably withheld or delayed) to an entity which acquires all or substantially all of the assets of AIL or to any subsidiary or Affiliate or successor in a merger or acquisition of AIL. The assigning Party shall remain responsible for its obligations hereunder, unless expressly agreed to in writing by the non-assigning Party.

24.2 CONDITIONAL ASSIGNMENT OF SUBCONTRACTS.

Notwithstanding the terms of Section 24.1 above and subject to the condition contained in this Section 24.2, Contractor hereby assigns to AIL its rights and obligations under Contractor's subcontracts with the Principal Subcontractors. Such assignment shall become effective, if at all, if this Agreement is terminated in accordance with the terms hereof.

24.3 ENTIRE AGREEMENT.

This Agreement, including any Schedules and Attachments referred to herein and attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. In particular, this Agreement supersedes the Services Agreement, and all works of authorship, Intellectual Property and other deliverables provided by either Party to the other thereunder or developed by either Party thereunder and all Services performed by Contractor shall be treated in accordance with the terms of this Agreement, notwithstanding any conflicting term or condition contained in the Services Agreement and the Services Agreement shall be null and void and of no further force or effect.

24.4 COMPLIANCE WITH LAWS AND STANDARDS.

- (a) Each Party shall perform its obligations in a manner that complies with all applicable Standards. If either Party is charged with the failure to comply with any of such Standards, the Party charged shall promptly notify the other Party of such charges in writing.
- (b) Each Party agrees that its execution, delivery, and performance of this Agreement shall not constitute (i) a violation of any judgment, order, or decree; (ii) a material default under any material contract by which it or any of its material assets are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a default as described in (ii).
- (c) Each Party shall be responsible for, and shall coordinate and oversee compliance with the laws and regulations in respect of items exported or imported hereunder by it. The Parties acknowledge that certain Intellectual Property Rights, including those related to

the Software and technical data to be provided hereunder and certain transactions hereunder, may be subject to export controls under the laws and regulations of the United States and other countries. Neither Party shall export or re-export any such items or any direct product thereof or undertake any transaction in violation of any such laws or regulations.

24.5 NOTICES.

All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given (i) when delivered by hand, (ii) one (1) day after being given for next day delivery to an express, overnight courier with a reliable system for tracking delivery, or (iii) five (5) days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to AIL:

ASTROLINK International LLC
6701 Democracy Boulevard
Suite 1000
Bethesda, MD 20817
Attn: General Counsel
Facsimile: (301) 581-4001

If to Contractor:

ViaSat, Inc.
6651 El Camino Real
Carlsbad, CA 92009
Attn: General Counsel
Facsimile: (760) 929-3926

With a copy to:

Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037-1128
Attn: * * *
Facsimile: * * *

With a copy to:

ViaSat, Inc.
6155 El Camino Real
Carlsbad, CA 92009
Attn: President
Facsimile: (760) 929-3926

A Party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

24.6 COUNTERPARTS.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

24.7 RELATIONSHIP OF PARTIES.

Contractor, in furnishing Terminals and Services hereunder, is acting as an independent contractor, and Contractor has the sole right and obligation to supervise, manage, direct, procure, perform or cause to be performed, all work to be performed by Contractor under this Agreement. Contractor is not an agent of AIL and has no authority to represent AIL as to any matters, except as expressly authorized in this Agreement.

24.8 SEVERABILITY.

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by an arbitrator or a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remainder of this Agreement shall remain in full force and effect.

24.9 CONSENTS AND APPROVAL.

Except where expressly provided as being in the discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

24.10 WAIVER OF DEFAULT; CUMULATIVE REMEDIES.

(a) No waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, waiver, or discharge is sought to be enforced. A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained.

(b) Except as otherwise expressly provided herein and subject to Sections 10.4(e) and 21.2 above, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

24.11 SURVIVAL.

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement (in whole or in part) shall survive any termination or expiration of this Agreement (in whole or in part, as applicable) and continue in full force and effect, but shall not extend the applicable statute of limitations.

24.12 PUBLIC DISCLOSURES.

Except as may be required by applicable law or in response to an order of a court of competent jurisdiction or government agency, neither Party nor its subcontractors will issue a press release or other public announcement concerning the subject matter of this Agreement without the prior approval of the other Party, which approval shall not be unreasonably withheld or delayed. Such approval must be provided (or the notice that such approval is withheld must be provided) within five (5) business days after the request of the other Party. In addition, all media releases, public announcements, and public disclosures relating to this Agreement or the subject matter of this Agreement, including promotional or marketing material, but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or

regulatory requirements beyond the reasonable control of the disclosing Party, shall be coordinated with and approved in writing by both Parties prior to release. Notwithstanding any provision to the contrary contained herein or in the Proprietary Information Agreement by and between the Parties dated December 22, 1998, the Parties agree that if public disclosure of the terms of this Agreement is required by the U.S. Securities and Exchange Commission (the "SEC") to be made, the Party required to make such disclosure shall, prior to making any such disclosure, (i) notify the other Party of such requirement and (ii) request from the SEC confidential treatment of the material provisions of this Agreement in accordance with Rule 406 (or any successor rule or regulation) promulgated under the Securities Act of 1933, as amended, or Rule 24b-2 (or any successor rule or regulation) promulgated under the Securities Exchange Act of 1934, as amended, which request shall be prepared in consultation with the other Party.

24.13 THIRD PARTY BENEFICIARIES.

Except as specifically provided in this Agreement, this Agreement is entered into solely between, and may be enforced only by, AIL and Contractor. This Agreement shall not be deemed to create any rights in third parties, including suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

24.14 AMENDMENT.

This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both Parties.

24.15 INCORPORATION BY REFERENCE AND ORDER OF PRECEDENCE

(a) The Schedules and Attachments attached hereto are hereby incorporated by reference into this Agreement. Subject to Section 24.14, any amendments to Schedules and Attachments, and any other Schedules and Attachments that are agreed upon by the Parties subsequent to the Effective Date, shall likewise be incorporated by reference into this Agreement.

(b) Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence):

- (i) Change Orders;
- (ii) This Agreement;
- (iii) The Schedules;
- (iv) The Attachments to the Schedules; and
- (v) Orders.

24.16 COVENANT AGAINST PLEDGING.

Contractor agrees that, without the prior written consent of AIL, it shall not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from AIL under this Agreement for any reason whatsoever, except as otherwise expressly permitted under Section 24.1.

24.17 SECURITY INTEREST.

Contractor reserves a purchase money security interest in each Terminal or component thereof delivered under this Agreement in the amount of the purchase price and in AIL's proceeds from any sale of such product. This security interest will be satisfied by payment in full of the purchase price. A copy of the pertinent provisions of this Agreement may be filed on Contractor's behalf with appropriate state authorities any time after signature by AIL as a financing statement in order to perfect Contractor security interest. AIL agrees to sign upon request any document necessary to perfect Contractor's security interest and cooperate in the filing and protection of same.

24.18 GOVERNING LAW.

This Agreement and performance under it shall be governed by and construed in accordance with the laws of state of New York without regard to its choice of law principles. The United Nations Convention for Sale of Goods shall not apply to this Agreement or the Orders placed hereunder.

24.19 COVENANT OF GOOD FAITH.

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

24.20 LENDER ASSURANCES.

Contractor agrees to work cooperatively with AIL in connection with AIL's efforts to obtain financing for the AIL System and the work performed hereunder. Contractor agrees to execute such documents as may be reasonably required by AIL financing parties.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the undersigned officers, thereunto, duly authorized, as the Effective Date.

ASTROLINK INTERNATIONAL LLC

VIASAT, INC.

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE 1
TARGET COUNTRIES

* * *

- -----
* Certain confidential information has been omitted and filed with the Securities and Exchange Commission pursuant to a Request for Confidential Treatment

SCHEDULE 2

MILESTONE AND PAYMENT SCHEDULE

IN ACCORDANCE WITH SECTION 5.3, CONTRACTOR SHALL BE PAID IN ACCORDANCE WITH THE BELOW MILESTONE AND PAYMENT SCHEDULE FOLLOWING ACCEPTANCE.

* * *

2-1

SCHEDULE 3

STATEMENT OF WORK

* * *

3-1

SCHEDULE 4

WHOLESALE PRICES FOR TERMINALS

* * *

4-1

SCHEDULE 5

DEVELOPMENT TERMINATION LIABILITY

* * *

5-1

SCHEDULE 6

TOTAL PROJECTED INSTALLED TERMINAL QUANTITY PER YEAR

* * *

6-1

SCHEDULE 7

CONTRACTOR SUPPORT TO AIL MARKETING, SALES AND DISTRIBUTION OF TERMINALS

As a part of this agreement, Contractor will proactively support the efforts of AIL to market, sell and distribute Terminals and the AIL Service. Within the guidelines set forth below and as mutually agreed by the Parties, Contractor will directly support consistent with AIL's general direction, AIL's marketing and sales initiatives prior to commercial introduction of the AIL Services ("Pre-Launch Services") and following commercial introduction of AIL Services ("Post-Launch Services"). The timing of Pre-Launch Services and Post-Launch Services shall be consistent with introduction of the AIL Service on a country-by-country basis consistent with the Agreement.

I. PRE-LAUNCH SERVICES SUPPORT PHASE

In order to effectuate support prior to the commercial introduction of the AIL Services Contractor shall:

- Perform and provide research services consistent with our capabilities;
- Analyze marketing and distribution research and forecasting efforts including analysis of AIL Terminal materials, such as countries and priority forecasts, as well as roll-out, and sharing of relevant primary and secondary research obtained by Contractor;
- Provide on-site support to AIL marketing efforts at major telecommunications shows including mock ups, brochures, personnel, and satellite feed for demonstrations, as appropriate;
- Develop and distribute sales materials and literature, including but not limited to artwork, product photos and data sheets, describing the features of the Terminals;
- Provide support to demonstrations for major service providers and/or major global accounts;
- Implement integrated system sales tools and global distribution planning targeted to equipping * * * Professional Services for incorporation of Astrolink Terminals and AIL services into the total network solutions offered by * * * to its customers;
- Direct service provider and retail customer contacts with existing and potential customers in the market segments and geographic regions covered by Contractor and its Principal Subcontractors; and
- Implement any other promotional activities as parties may agree from time to time.

These activities will be undertaken as needed to support the level and phase of marketing activity being performed by AIL.

II. POST-LAUNCH SERVICES SUPPORT SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

- Continued support to major telecommunications shows as outlined above;
- Direct selling of AIL services through any applicable broadband satellite services business operated and/or jointly owned by Contractor to the extent allowed by its business charter;

- Provision of product and sales materials on an on-going basis;
- Provision of collateral materials for customers;
- Hosting customer events in addition to trade shows;
- Contractor will profile/educate customers and/or providers on AIL products and services at applicable seminars/conferences including those sponsored by * * *; and
- Contractor will conduct press activities to inform the marketplace and industry of the progress and key successes of AIL Terminal deployment.

These activities will be undertaken as needed to support the level of marketing and sales activities commensurate with the market forecasts established for each year.

III. FUNDING

A. PRE-LAUNCH SERVICES

Contractor activities (as outlined above) during this phase will not be required to exceed a level of * * * or an equivalent sales value of * * * including non-labor expenses. The Parties will meet on a quarterly basis to plan the activities for the next quarter. The Parties will mutually agree to the expected amount of Contractor effort to be expended in support of that plan. At the quarterly meetings, the Contractor will report on the level of activity actually performed during the preceding quarter. At the first such meeting, the Parties will develop a high-level plan covering the entire phase for initial resource planning purposes. Up to the maximum levels above, the Contractor agrees to support reasonable requests from Astrolink for direct marketing and sales support as a part of these quarterly plans. * * * is recognized by the Parties to be an important source of market and distribution research and planning and a potentially powerful distribution channel for Terminals and services. Consequently, Contractor expects that approximately * * * of this support effort will be performed by * * *. The nature of the support requested over time may increase or decrease that anticipated percentage over the course of this phase.

B. POST-LAUNCH SERVICES

During the period after the launch of services, the Parties will continue to have quarterly meetings to plan upcoming marketing activities. These plans are expected to be define marketing and sales activities commensurate with the market forecasts established for each year. The level of support under this Agreement over the post-service launch support phase is expected to fall in line with typical industry averages for wholesale marketing of telecommunications equipment (* * * of actual wholesale terminal sales). At the quarterly meetings, ViaSat will report on activities accomplished over the previous quarter.

SCHEDULE 8

FORM OF SERVICE PROVIDER AGREEMENT

[TO BE COMPLETED WITHIN SIXTY (60) DAYS AFTER THE EFFECTIVE
DATE AND ATTACHED IN ACCORDANCE WITH SECTION 8.2]

SCHEDULE 9

COUNTRIES WITH CONTRACTOR AND SUBCONTRACTOR FACILITIES

[TO BE PROVIDED BY CONTRACTOR WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE]

SCHEDULE 10

ESCROW AGREEMENT

[TO BE COMPLETED WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE
DATE AND ATTACHED IN ACCORDANCE WITH SECTION 10.6]

10-1

SCHEDULE 11

KEY CONTRACTOR PERSONNEL

Pursuant to Section 12.5, the following individuals are designated as Key Contractor Personnel:

POSITION - - - - -	NAME - - - -
PROGRAM MANAGER	* * *
PROJECT ENGINEER	* * *
LEAD SYSTEMS ENGINEER	* * *
LEAD SOFTWARE ENGINEER	* * *

* * * is ViaSat's Business Area Director for Ka-Band programs. Until such time as he appoints a Program Manager to report to him on this project, Mr. * * * is the Acting Program Manager.

SCHEDULE 12

LIST OF APPROVED SUBCONTRACTORS

As of the Effective Date of the Agreement, the Principal Subcontractors are the only approved Subcontractors. In the event that additional Subcontractors are desired, Contractor shall propose to AIL the addition of Material Subcontractors in accordance with Section 12.9.

12-1

SCHEDULE 13

SERVICE STANDARDS

Pursuant to Section 13, Service Standards, the Parties will develop and agree upon meaningful quantitative and qualitative performance standards in accordance with the following schedule:

- At the PDR, Contractor shall present the basic Service Standard classes and an overview of the possible metrics for each.

- At the PRR, Contractor shall propose the Service Standard and the associated metrics. The Parties, upon agreement on the proposed Service Standards, shall supersede this Schedule 13 with a revised Schedule 13, which incorporates the agreed upon service standards and metrics.

SCHEDULE 14

The rates and guidelines for expenses and travel set forth on this Schedule 14 apply only to those Services identified in the Agreement that refer to Schedule 14.

CONTRACTOR RATES

Grade -----	Category -----	Hourly Rate -----
E 1	Executive	* * *
E 2	Sr./Lead Eng.	* * *
E 3	Eng.	* * *
E 4	Jr. Eng.	* * *
T 1	Field Service Eng.	* * *
T	Tech	* * *
S	Support	* * *

Notes:

- 1) The rates set forth above are in effect through the Contract Year 2001. Thereafter, beginning for Contract Year 2002, Contractor may increase the labor rates at the end of each Contract Year at a percentage rate that does not exceed the percentage change from one Contract Year to another of the Bureau of Labor Standards, Table 3. Employment Cost Index for total compensation for Private Industry workers for Industry, Goods Producing, White Collar.
- 2) As set forth in the Agreement and the SOW, Contractor shall also be reimbursed in accordance with the above in the event that the engineering support ("Support Services") exceeds * * * for support of the AIL System.
- 3) Contractor shall also be reimbursed for actual unburdened expenses related to travel, per diem and other related expenses.

SCHEDULE 15

EXTENDED WARRANTY OPTION

Extended Warranty shall be provided in accordance with the Agreement. Pricing for this Extended Warranty shall be proposed by Contractor at the CDR.

SCHEDULE 16
WARRANTY PROCEDURES

This Schedule summarizes Contractor's standard warranty procedures of its commercial VSAT Product, StarWire. As a part of the Product Support Plan set forth in the SOW, Contractor shall tailor this Schedule to reflect AIL's business and in compliance with the SOW.

1.0 PURPOSE

The Product Support and Service procedure defines the policies, authority, and responsibility for the support of warranty issues, field service, customer observations and responses for improvement of Contractor products.

2.0 SCOPE

All shipped Contractor systems and products governed by the standard warranty for those products.

3.0 GENERAL POLICIES

- 3.1 The Product Support group is the primary contact for all field-related issues.
- 3.2 The general warranty policy for Contractor products covers defects in materials and workmanship for one year after shipment.
- 3.3 Return Material Authorizations (RMA) are issued from Product Support to process product returns for warranty and out-of-warranty repair, upgrade, and exchanges.
- 3.4 All authorized returns are shipped pre-paid to Contractor. Shipping expenses for products returned to the customer are borne by Contractor, unless indicated otherwise by contract.

4.0 GENERAL PROCEDURE

- 4.1 The Product Support group receives, logs, and routes customer observations and reports of problems. Reports from this process are distributed to appropriate product groups for disposition.
- 4.2 Product Support and the product group relative to the product type and specification investigate customer reports. The results of this investigation are documented and communicated to the Customer.
- 4.3 Where applicable, Product Support and/or Product Engineering ensure that corrective action is implemented for the appropriate processes, as required, and the results documented and communicated to the Customer.
- 4.4 As a benefit of continuous improvement, Product Support shall periodically inform Customers of upgrade, preventive maintenance, and service opportunities for previously shipped products.

- 4.5 Customer observations and feedback will be evaluated and the results presented to management and department heads in order to identify both constructive and deficient areas of performance.

SCHEDULE 17

POST-WARRANTY SUPPORT AND REPAIR OBLIGATIONS

In the event that the Warranty or the Extended Warranty has expired, Contractor will provide the following services and/or support:

- * Spares Support and Pricing proposed by Contractor at CDR and mutually agreed by the Parties.
- * Telephone Support at varying levels up to the limits described in the Warranty with pricing to be determined for each level on a Contract Year basis. Telephone support must be subscribed to in at least three (3) month increments.
- * Factory repair services. Contractor will accept Terminals returned to factory for repair on a current repair price basis. Customer assumes the expense and risk of loss for transportation.
- * On-Site Repair and/or Assistance. In accordance with the then current Field Support Rate plus travel, per diem and other expenses.

A Purchase Order (P.O.) is required from the customer if a Terminal is returned and is out-of-warranty. The Purchase Order must be received prior to product receipt or customer product returns are held in Receiving until the P.O. is processed.

SCHEDULE 18

SEED ORDER DELIVERY REQUIREMENTS

* * *

18-1

MEMORANDUM OF AGREEMENT

Between Astrolink International LLC and ViaSat, Inc.

This Memorandum of Agreement ("MOA") is made and entered into this 20th day of October, 2000, by and between:

Astrolink International LLC, a limited liability company organized under the laws of the State of Delaware and having its principal place of business at 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20817, (hereinafter referred to as "Astrolink");

and

ViaSat, Inc., a Delaware corporation having its principal place of business at 6155 El Camino Real, Carlsbad, California 92009 (hereinafter referred to as "ViaSat");

(individually referred to as a Party and collectively referred to herein as the "Parties"),

WITNESSETH

WHEREAS, Astrolink is creating and will deploy a worldwide two-way broadband communications network utilizing a geostationary orbit, Ka-Band satellite system, to deliver a full complement of two-way data and multimedia communications services (and related applications), with the Ka-Band satellite service planned to be available in 2003;

WHEREAS, ViaSat builds state-of-the-art two-way earth terminals ("User Terminals"), specifically designed for "mesh" and "hub" data communications networks, has negotiated initial contracts for capacity on existing satellites and has begun deployment of a network services business addressing the same market segments as Astrolink;

WHEREAS, Astrolink and ViaSat have entered into an agreement on October 20, 2000 for ViaSat to design, develop and produce User Terminals for the Astrolink Ka-Band system (the "Terminal Contract");

WHEREAS, Astrolink intends to authorize ViaSat to offer Astrolink's satellite services and applications to customers as an Astrolink Service Provider;

WHEREAS, Astrolink and ViaSat intend to establish the terms for provision of such services in accordance with this MOA; and

WHEREAS, Astrolink and ViaSat intend to implement this MOA through a definitive agreement (the "Master Agreement") to be developed based on the terms of this MOA;

NOW, THEREFORE, the Parties hereto, intending to be bound, do hereby agree as follows:

1. Satellite Service. Astrolink shall provide and ViaSat shall purchase (for resale to end user customers) satellite services, e.g., access, transport, application and content, on each of Astrolink's first four satellites ("Satellite Service(s)"). Such Satellite Service shall include a full range of services offered by Astrolink to comparable resellers (such as Service Providers and/or Service Partners) for comparable class and volume of service to the end-user (subject to applicable laws and regulation) for provision by ViaSat to end-user customers during the first [*] (which may be extended up to an additional [*] if ViaSat cannot utilize \$25,750,000 of Satellite Services during the first [*]) of operational service on each of the first four satellites. Operational service for each satellite commences upon such satellite being ready for commercial service with a fully-operational Regional Network Control Center ("Operational Date").

- - - - -
 * Certain confidential information has been omitted and filed with the Securities and Exchange Commission pursuant to a Request for Confidential Treatment.

2. Effective Date; Term. This MOA shall be effective upon the Astrolink Board of Directors' approval of this MOA as executed by the Parties ("MOA Effective Date"). The term of this MOA shall be for one (1) year from the MOA Effective Date or until it is succeeded by the execution of a Master Agreement, whichever occurs first; the term may be renewed for succeeding one (1) year periods at the mutual agreement of both Parties prior to the execution of the Master Agreement ("MOA Term"). The term of the Master Agreement will be from Master Agreement execution through a period of [*] (or such later period as provided in paragraph 1 above) after the Operational Date of Astrolink's fourth satellite (as mutually adjusted to accommodate changes in satellite launch plans), plus any exercised option periods in the Master Agreement ("Master Agreement Term").
3. Use of Satellite Services. ViaSat (or, with Astrolink's written consent which will not be unreasonably withheld, ViaSat's affiliates) will resell various Astrolink-branded services using the Astrolink satellite system with approved Astrolink-branded terminals. Such terminals are not part of the terminals ordered by Astrolink under the Terminal Contract and, therefore, are not included as part of the Seed Order of that Contract (but are included in calculating the Minimum Quantity Purchase Commitment Shortfall Liability under that Contract).
4. User Terminal Volume. ViaSat may deploy up to [*] Astrolink-branded [*] and [*] terminals (or an equivalent mix, including comparable terminals), utilizing the Satellite Service during the [*] of operational service on each of the first four (4) Astrolink satellites (or such later period as provided in paragraph 1 above) ("Service Period"), for a maximum of [*] terminals served across the first four (4) satellites

("UserTerminals"). In determining the equivalent mix of terminals above, the Master Agreement will incorporate guidelines for determining how limited use terminals are accounted for in calculating the total terminals deployed. The aggregate of such Satellite Services per satellite across the applicable Service Period shall not exceed [*] Megabits per second ("Mbps") multiplied by [*]. Calculation of this aggregate use shall be based upon actual slot assignments as recorded at the Regional Network Control Center (RNCC) for each satellite. In addition, should such Satellite Services exceed a peak of [*] Mbps per satellite averaged over any one hour period, ViaSat will Pay (over and above the \$25,750,000 for the prepaid Satellite Services) for any excess usage at the Most Favored Customer Rate applicable at the time of the occurrence. For purposes of the foregoing, the "Most Favored Customer Rate" shall mean Astrolink's lowest service charge to comparable resellers (such as Service Providers and/or Service Partners) for comparable class and volume of service.

If the aggregate Satellite Services (defined above) on a satellite are consumed prior to the end of the [*], AIL will continue to provide Satellite Services to ViaSat at the Most Favored Customer Rate for an additional period of up to [*] beyond the initial [*] period. The foregoing shall apply to those terminals already deployed by ViaSat at the time all Satellite Services have been consumed and to the extent ViaSat has, at the end of the [*] period, ongoing contractual commitments to provide services to end-user customers exceeding such [*] period.

5. Customer Conversion. At any time during the Master Agreement Term (and provided Astrolink agrees to accept such customers and their existing agreements), ViaSat can convert and turnover its customers to Astrolink or other Astrolink Service Providers and bring on additional customers, provided the number of terminals served by ViaSat does not exceed [*] at any given time. After the expiration of the Service Period on each satellite (as such may be extended up to [*] pursuant to paragraph 1 and upon notice to Astrolink prior the expiration of the [*]), ViaSat, if Astrolink so approves, can continue, on a per satellite basis, to be a Service Provider for its customers and Astrolink will sell Satellite Services to ViaSat (for resale to such customers) at Astrolink's Most Favored Customer Rate (defined in paragraph 7 below). Where Astrolink does not approve, the Parties will work out an orderly transition of the customer. Where ViaSat end-user customers are converted to Astrolink customers, such customers will be offered commercially competitive rates for service.
6. Joint Venture. The Parties intend to negotiate in good faith, on a timely basis, a joint venture for the provision of Astrolink services (both in the "pre-Astrolink satellite system" time period and during operations of the Astrolink satellite system). As part of those joint venture negotiations, the Parties will seek to establish mutually acceptable terms for integration, into the joint venture, of the reseller services performed by ViaSat hereunder and the provision of services to customers acquired by ViaSat.

7. Satellite Services Pricing. For the Satellite Services provided by Astrolink hereunder, ViaSat shall pay Astrolink the sum of Twenty-five Million Seven Hundred and Fifty Thousand Dollars (\$25,750,000) in accordance with Attachment 1, Milestone Payment Schedule. Furthermore, since this \$25,750,000 payment is being made in advance of Satellite Services being received, Astrolink will repay any amounts paid for Satellite Services not rendered to the extent such failure to render Satellite Services is due to the fault of Astrolink.

If rates (for an equivalent class and volume of service) lower than the Master Agreement rates are provided to another comparable Service Provider during the Master Agreement Term, ViaSat will be offered the right to receive Satellite Services at such rates in accordance with the terms applicable to such lower charges effective as of the date such equivalent service was provided, and an appropriate adjustment in Satellite Services and/or credit will be made at ViaSat's option.

8. Service Providers. Through a separate agreement, ViaSat will become an Astrolink Service Provider and/or Service Partner under the terms to be developed by Astrolink for such path-to-market organizations, provided that ViaSat shall not be required to accept any provision of such arrangements that are inconsistent with this MOA (and the implementing Master Agreement) without its consent, which shall not be unreasonably withheld.
9. Master Agreement. The Parties will develop and execute in a timely manner a Master Agreement implementing the terms of this MOA.
10. Miscellaneous.

(a) The Parties have jointly executed a suitable non-disclosure agreement (Proprietary Information No. 80401 dated 22 December 1998) (the "NDA"), which agreement shall, if deemed necessary by both Parties, be amended or replaced.

(b) ViaSat acknowledges and agrees to comply with the following rights in place between Astrolink and certain of its owners:

- (i) Lockheed Martin Global Telecommunications, Inc's ("LMGT") exclusive right to deliver and distribute Astrolink system services to the United States Government and all branches, divisions or agencies thereof anywhere in the world (subject to certain conditions);
- (ii) Telespazio Luxembourg S.A. ("TPZ") exclusive right to deliver and distribute the Astrolink system service in Italy (subject to certain conditions); and

- (iii) Liberty Media and its affiliates' rights of first refusal to provide installation and maintenance service for Astrolink terminals of Astrolink Service Providers in the United States and Canada (where such service contract is on generally accepted commercial price and terms).

In the event AIL enters into an agreement(s) (similar to those set forth in this paragraph 10(b)) in the future which materially and adversely restricts(s) ViaSat's ability to sell Astrolink-branded services in markets served by the first four (4) Astrolink satellites, the Parties shall negotiate an equitable adjustment to the Master Agreement.

- (c) This MOA does not and shall not be construed as constituting, creating, or giving effect to a joint venture, partnership or formal business organization of any kind, notwithstanding the provisions of paragraph 6 hereof.
- (d) The Parties agree that the Master Agreement and this MOA shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of law.
- (e) Neither Party will disclose the existence or contents of this MOA to any third party without the prior written consent of the other, including without limitation disclosure in any registration statement, report or other document filed with the Securities and Exchange Commission or any other government agency, unless required to do so by law. If disclosure to a government agency is required in the future, the Party proposing to make such disclosure will provide to the other Party reasonable advance notice of such disclosure, will seek confidential treatment of such disclosure by the agency, and will provide to the other Party an opportunity to object to or seek confidential treatment of such disclosure. The Parties will mutually agree in writing in advance on the contents of any press release or other disclosure or statement to any third party describing this MOA, its contents, or the alliance described herein, but neither Party is required to agree to any such press release.
- (f) Each Party represents it has the requisite corporate authority (subject to Board approval, if required) to enter into this Agreement and to fulfill its terms.
- (g) Neither Party may, or shall have the power to, assign this MOA or delegate such Party's obligations hereunder without the prior written consent of the other, which consent shall not be unreasonable withheld or delayed; provided, however, that the proposed assignee has the resources (financial, technical, personnel, etc.) to perform the assignor's obligations hereunder. Notwithstanding the foregoing, AIL may assign its rights and

obligations under this MOA with the approval of ViaSat (which approval shall not be unreasonably withheld or delayed) to an entity which acquires all or substantially all of the assets of AIL or to any subsidiary or Affiliate or successor in a merger or acquisition of AIL. The assigning Party shall remain responsible for its obligations hereunder, unless expressly agreed to in writing by the non-assigning Party. The foregoing provision shall be incorporated into the Master Agreement and related implementing agreements contemplated hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Agreement to be executed by their duly authorized representatives to be effective as of the MOA Effective Date:

FOR ASTROLINK:

FOR VIASAT:

By: /s/ Celso A. Azevedo

By: /s/ Stephen W. Cable

Name: Celso A. Azevedo
Title: Chief Executive Officer

Name: Stephen W. Cable
Title: Vice President, Broadband Systems

Date: October 9, 2000

Date: October 9, 2000

ATTACHMENT 1
MILESTONE PAYMENT SCHEDULE

In advance of the Satellite Service being available, ViaSat shall pay Twenty-Five Million Seven Hundred and Fifty Thousand Dollars (\$25,750,000) to Astrolink. The payment of this \$25,750,000 shall be made following the accomplishment of the set of Astrolink system deployment milestones set forth below ("Milestone Payments").

PROGRAM MILESTONE	MILESTONE DATE	MILESTONE AMOUNT	CUMULATIVE MILESTONE AMOUNT
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

* Certain confidential information has been omitted and filed with the Securities and Exchange Commission pursuant to a Request for Confidential Treatment.

Note: Milestones, Milestone Achievement Criteria and payment provisions to be finalized in the Master Agreement.

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE VIASAT INC. FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED SEPTEMBER 30, 2000 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS INCLUDED IN FORM 10-Q.

1,000

6-MOS		
	MAR-31-2001	
	APR-01-2000	
	SEP-30-2000	20,443
		0
		67,009
		0
		17,252
	109,188	29,936
		12,336
		151,491
	24,528	
		0
	0	
		0
		2
		125,891
151,491		
		76,356
	76,356	
		51,345
		51,345
		19,322
		0
	9,617	
		6,650
		2,261
	4,389	
		0
		0
		0
		4,389
		.21
		.19